

NOTE

This Microfiche meets the quality requirements of the American National Standard for Microfiche of Documents (ANSI PH5.9-1975). However, because of imperfections in the document from which it was made, it contains images that are illegible or difficult to read. The source document for this microfiche is the best copy that could be obtained prior to filming.

DISABILITY AMENDMENTS OF 1982

MAY 26, 1982.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

together with

SEPARATE VIEWS

[To accompany H.R. 6181]

[Including cost estimate and comparison of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 6181) to amend title II of the Social Security Act to provide adjustment benefits, vocational training, and waiver of overpayments for individuals terminated from the disability program, to strengthen the reconsideration process by providing for the earlier introduction of evidence of record, to provide for more uniformity in decision-making at all levels of adjudication, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 3, line 7, after "benefits" insert "under this Act".

Page 3, line 20, after "benefits paid" insert "under this title".

Page 4, line 2, after "paid to him" insert "under this title".

Page 5, line 10, after "benefits" insert "under this Act".

Page 9, line 6, after "paid" insert "under this Act".

Page 14, strike out lines 10 through 16.

Page 14, line 17, strike out "(d)(1)" and insert in lieu thereof "(c)(1)".

Page 17, lines 1 and 2, strike out "thereunder, except that it shall be made after opportunity for an evidentiary hearing" and insert in lieu thereof "thereunder; except that it shall be made after oppor-

tunity for an evidentiary hearing which is reasonably accessible to the claimant, and which is held by an adjudicatory unit of the State agency other than the unit that made the determination (relating to the claimant's disability or period of disability) on which the decision being reconsidered was based".

Page 17, lines 19 and 20, strike out "and which could have been available before such date," and insert in lieu thereof "where such decision was made after opportunity for an evidentiary hearing pursuant to paragraph (2) (B) (ii) or subsection (i) and where such evidence could have been available before the date of that decision,".

Page 19, lines 14 and 15, strike out "which could have been submitted before the date of the decision on reconsideration," and insert in lieu thereof "which is otherwise prevented by subsection (d) (5) from being admitted or considered in connection with such entitlement,".

Page 21, lines 15 and 16, strike out "determination" and insert in lieu thereof "determinations".

Page 21, line 24, strike out "redeterminations" and insert in lieu thereof "determinations".

Page 23, line 18, strike out "an evidentiary hearing" and insert in lieu thereof "an evidentiary hearing which is reasonably accessible to the claimant (and which is not held by the same person or persons who made the determination, relating to the claimant's disability or period of disability, on which the decision being reconsidered was based)".

Page 24, line 3, strike out "(e) (1)" and insert in lieu thereof "d".

Page 24, strike out lines 11 through 14.

Page 24, line 15, strike out "(f) (1)" and insert in lieu thereof "(e) (1)", and strike out "paragraph (2)" and insert in lieu thereof "paragraphs (2) and (3)".

Page 24, strike out "Act," in line 19 and all that follows down through "1984" in line 22 and insert in lieu thereof "Act".

Page 24, after line 25, insert the following new paragraph:

(3) Section 221(d) (2) (B) of the Social Security Act, as amended by subsection (c) of this section, shall apply only with respect to requests (for reconsideration of decisions by the Secretary) filed—

(A) on or after January 1, 1984, or

(B) with respect to determinations (relating to disability or to periods of disability) to be made by a State agency in any State which notifies the Secretary in writing that it wishes to make determinations under such section 221(d) (2) (B) prior to January 1, 1984, on or after the first day of such month (after the month in which this Act is enacted and prior to January 1984) as may be specified in such notice.

For purposes of such section 221(d) (2) (B), each State shall initially notify the Secretary in writing that it wishes to make determinations under such section (specifying the month with which it wishes to commence making such determina-

tions), or shall notify the Secretary in writing that it does not wish to make such determinations, no later than January 1, 1983; and any State which has not so notified the Secretary by January 1, 1983, shall be deemed for all the purposes of section 221 of the Social Security Act to have notified the Secretary in writing (as of that date) that it does not wish to make such determinations.

Page 25, strike out lines 1 through 11.

Page 28, line 25, strike out "203(f)(8)." and insert in lieu thereof "203(f)(8)".

Page 35, lines 7 and 8, strike out "and the amendment made by subsection (d)" and insert in lieu thereof "the amendments made by paragraphs (1) and (2) of subsection (d)".

Page 35, line 11, strike out "enacted" and insert in lieu thereof the following: "enacted, and the amendments made by paragraphs (3) and (4) of subsection (d) shall be effective with respect to months beginning after the month in which this Act is enacted".

Page 40, line 11, strike out "(2)(A)" and insert in lieu thereof "(2)".

Page 40, strike out lines 14 through 16.

TABLE OF CONTENTS

	Page
I. Capsule Summary.....	4
II. Purposes and Scope.....	5
III. Summary of Bill.....	6
A. Protection for Terminated Disability Beneficiaries.....	6
B. Strengthening the Reconsideration Process.....	7
C. Uniformity of Decision-making.....	7
D. Miscellaneous Changes.....	8
IV. General Discussion.....	8
Section 2. Continued payment of disability insurance during appeal.....	8
Section 3. Adjustment benefits.....	9
Section 4. Benefit payments not to be treated as overpayments in certain cases.....	10
Section 5. Partially closing the record at reconsideration after face-to-face hearing in disability cases.....	11
(a) Incentives to get evidence at reconsideration.....	12
(b) Extending period of appeal to reconsideration.....	14
Section 6. Review of disability decisions.....	15
(a) Own-motion review of ALJ decisions.....	15
(b) Review of state agency decisions.....	16
Section 7. Uniform standards for disability determinations.....	16
Section 8. Evaluation of pain.....	18
Section 9. Substantial gainful activity and trial work.....	18
Section 10. Prohibition against interim payments before a final determination is made.....	19
Section 11. Improvements in disability offset provisions.....	20
Section 12. Payment of costs of rehabilitation services from trust funds; experiments and demonstration projects.....	21
V. Section-by-Section Analysis.....	25
VI. Other Matters to be Discussed Under the Rules of the House.....	34
VII. Changes in Existing Law Made by the Bill as Reported.....	40
Separate views of Hon. Harold Ford, James Shannon, Robert Matsui, Don Bailey, Charles Rangel, Pete Stark, Frank Guarini, William Brodhead, Marty Russo, Beryl Anthony, Thomas Downey and Ken Holland.....	81

I. CAPSULE SUMMARY OF PRINCIPAL PROVISIONS OF DISABILITY AMENDMENTS OF 1982 (H.R. 6181)

PROVISIONS TO PROVIDE ADJUSTMENTS IN DISABILITY TERMINATION (CDI) PROCESS

Permanent changes

Allow benefits to continue until reconsideration (similar to SSI program), subject to overpayment if appeal is lost. (Sec. 2)

Temporary changes (apply only through calendar year 1984)

Allow additional "adjustment benefits" for four months in cases of medical termination for individuals on rolls at least 36 months. (Sec. 3)

Waive overpayments for period before notice in medically terminated cases. (Sec. 4)

Provide vocational evaluation and placement services through the State rehabilitation agencies for medically terminated CDIs. (Sec. 12)

PROVISIONS TO INCREASE ROLE OF RECONSIDERATION PROCESS

Provide face-to-face evidentiary hearing at reconsideration (through Social Security if the State agency wishes) for medical termination cases only (established by January 1984). Partially close record for purposes of introducing evidence after reconsideration level. (Sec. 5)

Lengthen appeal time to reconsideration level from 60 days to six months. (Sec. 5)

PROVISIONS FOR MORE UNIFORMITY OF DECISION-MAKING

Own-motion review of ALJ allowances, 15 percent in fiscal 1982 and 25 percent thereafter. Modifies preadjudicative review requirements so as to require after 1982 a review of at least 10 percent of all State Agency determinations each year with at least one-sixth of all reviews being denials. (Sec. 6)

Requires the Secretary to assure that uniform standards shall be applied at all levels of adjudication. (Sec. 7)

Provides Federal definition for the evaluation of pain. (Sec. 8)

MISCELLANEOUS PROVISIONS

Automatically adjust SGA and trial work amounts on the basis of increasing wage levels. (Sec. 9)

Technical and minor policy amendments to workers compensation and megacap provisions. (Sec. 11)

Liberalized reimbursement for vocational rehabilitation program and demonstration authority to test private rehabilitation agencies. (Sec. 12)

Prohibition against unlawful payment of disability benefits. (Sec. 10)

II. PURPOSES AND SCOPE

In its continuing review and evaluation of the social security disability insurance program, your Committee has found that it is generally serving the disabled people in the manner contemplated by the Congress. In recent years the disability program has been restored to an actuarially sound basis. The percentage of workers on the social security disability rolls is the lowest in the history of the program. The 1981 incidence rate is now 3.6 disabled-worker beneficiaries per thousand workers compared to a high of 7.1 beneficiaries per thousand in 1974. The numbers of workers on the rolls has leveled off after a precipitous climb during the mid 1970's and has actually declined slightly in recent years. The large swings in the allowance rate over a relatively short span of time is, however, a situation of some concern from the standpoint of the stability of disability decision-making process, and the lack of uniformity between decisions at the state agencies and ALJ level is a very real problem. The social security disability program has recently been strengthened by some important changes that were enacted in the Disability Amendments of 1980 (Public Law 96-265). These changes include strengthening work incentives, improving program accountability and uniformity of administration, and improving adjudicative and appeals procedures. However, in reviewing the disability program since the 1980 legislation, your Committee believes certain further legislative is needed, particularly in relation to the termination of benefits as a result of the existing review of the disability rolls and the lack of uniformity in disability decision-making.

Public Law 96-265 provided for periodic review of all disability cases to assure that only people whose disabilities were continuing should get benefits. This was necessary because of major deficiencies which had developed in the continuing disability investigation procedures (CDI) during the middle 1970's. The 1980 law provided that the review should begin in January 1982. However, the Social Security Administration instituted an accelerated program of review of the existing disability rolls in March 1981 as part of the Administration's budget incentives for fiscal 1982. The Administration stated in its budget transmittal in February 1981:

The General Accounting Office (GAO) in a draft report has stated that: "there may be as many as 584,000 beneficiaries not currently disabled but still receiving disability benefits. These beneficiaries represent over \$2 billion annually in Trust Fund costs."

Social Security Administration (SSA) studies confirm that huge sums are paid incorrectly to individuals misclassified as disabled. As a result, DI caseloads have risen by 80 percent since 1970, and costs have climbed by 500 percent. Under the direction of this Administration, the SSA will begin to intensively review cases to insure that only the truly disabled receive disability benefits.

Although your Committee does not necessarily endorse all the findings of the GAO report, your Committee for years has strongly supported the concept of reviewing the disability rolls on a regular and periodic basis. The program came under severe criticism in the past because this was not being done. This review must not be done in a precipitous manner; beneficiaries must be given adequate notice and time to prepare their cases. The State agencies that adjudicate the cases must be given the time and resources fully to document termination decisions. Moreover, your Committee recognizes that until the review of the existing disability rolls is completed and the periodic review becomes a regular and well-functioning part of the administrative process, some adjustments and allowances are in order. There have been a number of cases where beneficiaries on the rolls for many years, whose cases have never been reviewed, have had their benefits terminated abruptly. These beneficiaries may suffer financial hardships and have a difficult time adjusting when their benefits are stopped. H.R. 6181 contains several provisions intended to deal with these problems.

The second major concern that your Committee's bill addresses is the lack of uniformity and consistency in decision-making at all levels of the adjudicative process. For example, in fiscal year 1981, the administrative law judge (ALJ's) reversed about 58 percent of State agency decisions on appealed claims. Your Committee believes that a large portion of the variations in decision-making result because State agencies and ALJ's have been making disability decisions on the basis of different criteria. H.R. 6181 would make several changes to promote uniformity by requiring that the same criteria be used at all levels of the adjudicative process.

SSA has recently reported to the Congress on the results of reviews of state agency and ALJ decisions mandated by Public Law 96-265. Your Committee believes that these reviews will improve the consistency of decision making, and the bill therefore makes several changes to strengthen this review process.

Finally, your Committee is recommending a number of miscellaneous changes which are designed to improve the vocational rehabilitation (VR) program for disabled beneficiaries, simplify program administration, clarify congressional intent, and avoid certain unintended effects of the disability offset provision.

III. SUMMARY OF BILL

A. PROTECTION FOR TERMINATED DISABILITY BENEFICIARIES

Your Committee's bill contains a number of provisions which are designed to protect Social Security and SSI beneficiaries whose disabilities are terminated by providing some additional benefits and job services which will help them to avoid severe financial hardships and to ease the adjustments they will have to make due to leaving the benefit rolls. These provisions would:

- (1) Permit a terminated Social Security disability beneficiary to elect to have benefits continue until a reconsideration determination is made (repayment would be required if the termination is upheld);

(2) Provide, through calendar 1984, additional months of "adjustment benefits" in cases where Social Security or SSI benefits have been terminated due to medical cessation for beneficiaries who have been on the rolls for at least 36 consecutive months prior to termination;

(3) Not count as overpayments, through calendar year 1984, benefits paid to disabled Social Security and SSI beneficiaries for any months prior to receipt of notice of termination on account of medical recovery; and

(4) Establish a temporary VR program in fiscal years 1983-84 to provide evaluation and job-placement services to Social Security disability beneficiaries terminated due to medical recovery.

B. STRENGTHENING THE RECONSIDERATION PROCESS

H.R. 6181 contains a number of provisions designed to strengthen the reconsideration process, particularly as to termination cases.

The entire disability appeals procedure—initial decision, reconsideration and hearing—would for the first time be specifically spelled out in the law. Existing law is changed by providing that new evidence may not be entered into the record after the reconsideration decision unless the ALJ determines the evidence could not have been made available at the reconsideration level. This closing of the record would only be applicable in termination cases where there is an opportunity for a face-to-face evidentiary hearing. Such a hearing procedure would be required by January 1, 1984 and would apply to both Social Security and SSI cases. State agencies that do not wish to carry out this function can elect to have it done by Federal employees.

An individual who wishes to introduce evidence which could have been made available at the reconsideration level would have the option of having the case remanded to the State agency for incorporation of the evidence into the record or of going directly to an ALJ hearing without the evidence. Evidence of a new impairment or a worsening of the impairment would be admissible at the ALJ level. Individuals requesting reconsideration of a termination decision shall be informed both orally and in writing of the provisions of this requirement and would be advised that they may wish to retain an attorney or other representative to assist them during the reconsideration.

After an initial determination of ineligibility for disability benefits, under H.R. 6181 a claimant would have 180 days in which to request a review at the reconsideration level as opposed to 60 days under present law.

C. UNIFORMITY OF DECISION-MAKING

Your Committee's bill contains several provisions which are designed to promote uniformity and consistency of disability decision-making at all levels of the adjudicative process by:

(1) Requiring the review of 15 percent of ALJ allowances in fiscal year 1982 and 25 percent in each year fiscal years 1983-87, and requiring review of State agency denials as well as allowances before benefits may be paid;

(2) Requiring the same criteria to be used to make disability determinations at all adjudicative levels; and

(3) Including in the law an explicit statement as to how allegations of pain are to be evaluated in the disability adjudication process.

D. MISCELLANEOUS CHANGES

Your Committee's bill contains several other provisions affecting the Social Security and SSI disability programs. These include:

(1) Automatically revising, based on increases in average earnings levels, the earnings guidelines for determining whether a person is engaging in substantial gainful activity and for determining what constitutes a month of trial work for a person who returns to work despite an impairment;

(2) Making clear that Social Security benefits may not be paid until a final determination is made on an application for benefits by including in the law an explicit prohibition against interim payments;

(3) Improving the disability offset provision by correcting certain unintended effects of 1980 and 1981 legislation and by making the provisions easier to administer, and

(4) Revitalizing the VR program for disabled Social Security and SSI beneficiaries by making a number of changes, including expanding the definition of reimbursable State agency costs, and requiring SSA to experiment to determine how VR services can best be provided to beneficiaries.

IV. GENERAL DISCUSSION

SECTION 2. CONTINUED PAYMENT OF DISABILITY INSURANCE BENEFITS DURING APPEAL

When the Social Security Administration (SSA) determines that a DI beneficiary is no longer disabled or is otherwise ineligible, a notice is sent informing him that it appears that he is ineligible for benefits, and that he has 10 days in which to notify the agency whether or not he wishes to rebut the proposed decision. The agency actually provides another 5 days to recognize mailing time, thereby delaying the termination for 15 days after the date the notice is sent. If the beneficiary informs SSA that he wants to rebut the proposed decision, he is given additional time, at least 10 days, in which to submit new evidence to support his position that he is still eligible.

If the decision is to terminate benefits, the disability beneficiary receives benefits for the month that the disability ceases based on medical factors and for 2 additional months. If a beneficiary disagrees with the decision by the State agency to terminate his benefits, he or she has 60 days after receipt of the termination notice in which he may request a reconsideration of that decision by the State agency. Subsequently, if upon reconsideration the beneficiary's disability is found to continue, benefits are resumed retroactive to the month in which they were terminated.

Your Committee is concerned that the process of terminating disability benefits is often too precipitous. Disabled persons who have been on the rolls for years without question are receiving questionnaires as to their present condition, directives to attend medical examinations, and then notices of proposed termination with little time to present evidence or to develop their cases that they are still disabled. There are even problems in some cases in locating the individuals which should be addressed by the Social Security Administration. Sections 3 and 5 of your committee's bill would provide that disabled beneficiaries whose disabilities have medically ceased may receive benefits for four additional months and extends the time period in which a beneficiary may request a reconsideration of the decision to terminate his benefits. However, your Committee is concerned that additional provisions may be necessary to help deal with financial hardship that beneficiaries may encounter during this period while the reconsideration request is pending. The present provision allowing for retroactive payment where the reconsideration is favorable to the claimant does not adequately meet the disabled person's needs during this period.

Your Committee's bill would, therefore, permit Social Security beneficiaries who have been determined by SSA to have medically ceased to elect to receive benefits (including Medicare benefits) up to the time a reconsideration determination is made, or six months if that is earlier, upon enactment of this bill. The six months alternative period expires upon institution of the face-to-face hearing requirement on January 1, 1984. However, as under the existing SSI procedures, if the reconsideration decision upholds the initial decision that the Social Security beneficiary is ineligible, benefits paid after the termination date will have to be repaid. If the individual has received Medicare benefits during the appeal period they would not be considered to be an overpayment. The bill in section 5 also would require that beneficiaries be given an opportunity for a face-to-face hearing by the State agency in Social Security disability and SSI cases at the reconsideration level for medically terminated individuals beginning in 1984. (If the State is able to put this process into effect earlier the face-to-face hearing will be available before this date.)

SECTION 3. ADJUSTMENT BENEFITS

Under existing law, a Social Security or SSI disability beneficiary receives benefits for the month the disability ceases based on medical factors and for 2 additional months. Your Committee is concerned that in some medical cessation cases, people who have been on the benefit rolls for many years and whose cases have not been previously reviewed—or have not been reviewed on a regular basis—are abruptly taken off the rolls with virtually no adjustment period. In the future, under the provision in Public Law 96-265, all persons not permanently disabled must expect to be reviewed at least once every three years and should be so informed by the Social Security Administration upon award of benefits and periodically thereafter. However, such a process has not been fully operating in the past several years and many individuals who had not been reviewed for years did not expect the government ever to review their cases.

Your Committee's bill would provide 4 additional months of benefits to give beneficiaries (and their families) terminated due to medical factors time to adjust their personal and financial arrangements to take account of the fact that they will no longer be able to rely on monthly Social Security or SSI benefits for support. Knowing that there is a source of income for several additional months should help relieve some of the anxiety that these beneficiaries have when their benefits are terminated after many years.

The bill provides that individuals who had been receiving disability benefits for at least 36 consecutive months prior to termination would receive 4 additional months of benefits beginning with the later of (1) the first month for which benefits would no longer be payable, or (2) the month the beneficiary was notified of the determination that the disability had ceased. However, an adjustment benefit would not be payable for any month the beneficiary engaged in substantial gainful activity or in the case of fraud, was ineligible for benefits for a reason other than not being under a disability, or if the Social Security beneficiary was entitled or would be entitled upon application to another monthly Social Security benefit under the same program. The individual will continue to be eligible for Medicare during the additional period. This provision would expire at the end of calendar year 1984 when the review of existing disability rolls should be completed and when regular, ongoing review procedures and notification procedures will have been implemented.

SECTION 4. BENEFIT PAYMENTS NOT TO BE TREATED AS OVERPAYMENTS IN CERTAIN CASES

Under present law, a Social Security or SSI disability beneficiary receives benefits for the month that the disability ceases and for 2 additional months. Any benefit payments made after that are overpayments which the beneficiary must repay. In the great majority of cases, overpayments are not a major problem since the date the disability terminates is usually no earlier than the date of a new medical examination that had been requested by SSA in its review of whether the beneficiary's disability is continuing. In some cases, however, there may be existing medical evidence showing that the disability ceased at a much earlier date. Your committee feels that in most of these cases it was the system's fault that the individual's case was not looked at earlier and he should not be penalized for the government's failure to act in the past.

Your Committee does not think that terminated beneficiaries should be forced to repay these benefits. Accordingly, your Committee's bill provides that any Social Security or SSI disability benefits paid before the month a person was notified of benefit termination because of medical factors would not be considered overpayments. Similarly, payments made under Medicare will not be considered overpayments. Your Committee notes that SSA has recently implemented an administrative decision eliminating retroactive terminations in cases of medical cessations unless the beneficiary fraudulently failed to report a change in his condition. However, your Committee believes that this policy should be mandated by law through 1984, until the review of the existing disability rolls is completed.

SECTION 5. PARTIALLY CLOSING THE RECORD AT RECONSIDERATION AFTER FACE-TO-FACE HEARING IN DISABILITY CASES

There are a number of interrelated provisions in this section which are designed to improve the Social Security appeals process and make it more rational.

The disability determinations and appeals structure is multi-layered and can be quite lengthy. An individual applies at the Social Security district office and the initial determination is made at the State agency. The first appeal level is a reconsideration by the State agency and, if the claimant is not successful, he may appeal to a Federal administrative law judge. If not successful before the ALJ he may take his case to the Appeals Council. After all administrative remedies are exhausted, including an Appeals Council decision, the claimant may take his case to a district court and higher Federal court if need be. In the past the cases have been able to be taken up "de novo" at each administrative level and the courts have remanded very substantial numbers of cases to the administrative process for the taking of additional evidence. In the 1980 Amendments the first step were made to reform this process by "closing the record" at the ALJ level and modifying the unrestricted nature of the court remand.

The most questionable part of the appeals process continues to be the reconsideration level. The statistics point out the problem. There is an affirmance rate of 87 percent and an appeal rate of close to 60 percent. In contrast, in 1974 the reversal rate was twice as high and only 35 percent of the reconsideration decisions of the State agencies were appealed. This level generally is now considered a pro forma review which, at least as far as the claimant is concerned, is unproductive. Many reports have been received that attorneys are withholding evidence for presentation at the ALJ level where they believe they will get more favorable attention. Also since attorney fees are based on past due benefits there is little financial incentive for the attorney to dispose of these cases quickly at the first appeal level. We do not mean to imply that this plays a controlling role in attorney's decision. On the other hand, the past due benefit mechanism may also present a problem in getting adequate representation in termination cases where there may be fewer past benefits due. Attorney fee legislation, which has also been referred to the Judiciary Committee, will be the subject of hearings later in the session.

Most informed commentators agree that one of the major problems with the disability process is the failure to develop cases adequately at the State agency level. The Ways and Means Committee over the years has emphasized the need to get adequate medical and vocational evidence at the initial levels of adjudication. As a result of these efforts, and SSA's recognition of the problem, the percentage of cases having consultative medical examinations has risen from 20 percent to almost 40 percent of the cases. However, the fact that some attorneys choose to bypass the reconsideration level means that available evidence from treating physicians and specialists consulted independently by claimants is not available until the ALJ process. Moreover, the deliberate withholding of this evidence may not expedite the case as desired, but in fact may require an additional con-

sultative exam which the ALJ must arrange through the State agency, thereby further delaying the resolution of the case.

For years people have recommended "reform" or elimination of the reconsideration level. In 1960 the Harrison Subcommittee of Ways and Means questioned the "reconsideration" process which had just been made mandatory by regulation and asked for a report on its operation by the Department of Health, Education, and Welfare. In a report, HEW defended "reconsideration" in that the process was reversing a substantial number of cases and that its elimination would flood the ALJ level with cases. At that time, in the early 1960s however, almost 40 percent of the initial decisions were being reversed. Unfortunately, the argument that eliminating reconsideration would flood the ALJ level still appears to be valid. It would about double the ALJ case backlog which now is at a record high of 140,000 cases. The bill then is designed to revitalize the reconsideration process as the only viable option. This would be accomplished in a number of ways.

(a) Incentives to get evidence at reconsideration

H.R. 5700 (as introduced by Mr. Pickle and Archer) would have prevented the introduction of new evidence at the ALJ level requiring that if the claimant wished this material to be part of the record that the case be remanded to the reconsideration level (State agency). This remand would have been at the option of the claimant and he could go directly to the ALJ hearing with the evidence in the record if he so chose. If the evidence was of a worsening condition or a new impairment a new application for benefits would have been required.

This provision was modified by the Subcommittee on Social Security so that evidence of new and worsening conditions would be admissible at the ALJ level. The bill would have required that there would be remand to the State agency only if the evidence was "available" at the time of the reconsideration decision. A specific provision was also placed in the bill requiring both written and oral notice to the claimant that it was essential to get available evidence into the record at reconsideration and that the individual might wish to obtain an attorney or other representative. The amendment was purposely designed to get attorneys and other representatives to proffer relevant and available material which is essential to a decision on the best evidence at reconsideration.

However, there was concern expressed at the full Committee that some people are not adequately represented at the reconsideration level and this would deny—or at least delay—benefits to unsophisticated and needy applicants. In response to these concerns, the Committee has further modified the provision (Pickle Amendment) so that there will only be a remand to the State agency where there has been opportunity for a face-to-face presentation by the claimants at the reconsideration level and where the claimants have been completely informed of their rights and the advisability of securing adequate representation. The bill provides for a face-to-face reconsideration on disability termination for both Social Security and SSI cases. This procedure would not have to be instituted until January 1, 1984, although the States could put it into effect earlier. Thus, the Committee bill would couple the modified closed record requirement with the face-to-face hearing re-

quirement, i.e., no closed record unless a face-to-face hearing is available and this would be applicable only in termination cases. The procedures involving initial applications for benefits would not be changed. The Committee believes that the combination of provisions in the bill will (1) adequately protect claimants with the potential need to obtain adequate representation at the reconsideration level, (2) improve their situation by paying benefits to them until the reconsideration decision is made (68.1 percent of the claimants are appealing their termination decision), and (3) enhance the quality of decisions at the reconsideration level on termination cases, hopefully lessening the number of appeals to the ALJ level and ameliorating, to some degree, the hearing caseload crisis.

Face-to-face contact at reconsideration is probably one of the most studied ideas for improving the appeals process. Its adoption has been supported a number of times in the past by the Social Security Administration, but never implemented. For instance, in the Social Security Subcommittee's 1979 hearings on disability insurance Secretary Califano said he was instituting such a proceeding as part of the administrative action he was taking to implement disability program reform.

The principal rationale for face-to-face at reconsideration has been the idea that it might enhance claimant acceptance of the denial at the State agency level and reduce the number of appeals. Your Committee believes that face-to-face at reconsideration might also be a useful step in reducing the disparity in adjudication between the ALJs and the State agencies since this is one of the major differences between the procedures at these levels. The past experiments with face-to-face generally show a higher level of allowance and lower level of appeals resulting from the procedure. The real issue is whether face-to-face at reconsideration leads to better decision-making and enhanced respect for the system by applicants. This provision in the bill will provide a real test as to the effectiveness and fairness of a face-to-face reconsideration and the closing of the record, and if it proves successful it could, over time, be extended to the reconsideration process of initial claims.

Some concern was expressed as to the independence of decision-making at reconsideration by the State agency. The face-to-face hearing at reconsideration must meet the requirement of the *Kelly v. Goldberg* decision of the Supreme Court but not those of the Administrative Procedures Act. Present procedures require that a person other than the individual who made the initial decision reconsider the case. However, the Committee bill goes further and specifically provides that the reconsideration must be held by an adjudicatory unit of the State agency other than the unit that made the initial decision. It is further the intent of the Committee that the personnel who conduct these examinations be the best qualified disability adjudicators in the agency and that they be given adequate time and resources to make quality determinations. They should scrupulously follow the adjudicative standards published in the POMs and not be bound by other informally prepared material or undocumented administrative direction. There also have been allegations that the Social Security Administration is requiring that in mental cases and certain other categories of cases the listings must either be met or equalled. Although the Committee does not have the information to either verify or refute these

allegations, it is important to emphasize that the State agencies must follow strictly the standards set forth in the POMs.

Concern was also expressed that the face-to-face could not be effectively conducted in places not accessible to the claimant. The Committee expressly provides that the hearing will be "reasonably accessible" to claimants under standards which provide accessibility at least at the level currently provided under the ALJ hearing system.

Some arguments have been made that face-to-face could not be effectively implemented in those States with a centralized operation for disability determination. The bill provides, therefore, that if the State believes it cannot adequately carry out this responsibility, it can opt out of the reconsideration function on termination cases and this can be carried out instead by federal employees. The decision to participate must be made and communicated to the Secretary by January 1, 1983.

The Social Security Administration should also take a number of steps administratively to make sure that cases are adequately developed at the reconsideration level and that individuals are adequately informed of their rights in appealing the decision to terminate. The Committee believes that the initial notices of termination should provide an explicit statement emphasizing the importance of the reconsideration decision from an evidentiary standpoint and the desirability of being represented by an attorney or other representative.

Your Committee is particularly concerned about the problem of notifying mentally impaired people of the fact that they are facing a termination proceeding and informing them of their rights and obligations in supplying evidence at that time. These cases present a particularly difficult problem. Present procedures do state that "special attention" and "additional effort" are required when a mentally impaired person does not respond or "cooperate" in the termination procedures. However, it appears that there is a question whether the "representative payee" mechanism which requires a finding that the claimant is incapable of handling his finances is an adequate mechanism in the termination situation. The Committee believes that the State agencies should be required to take more positive steps to see that every action is taken so that the rights of individuals with such conditions are adequately protected. Evaluating the nature and extent of mental impairments for disability purposes is difficult at best and early information from the GAO indicates that close to 30 percent of terminations are occurring on the basis of these conditions. There are major problems in developing an adequate medical record for mentally ill persons who qualified for benefits a number of years ago. Evidence from treating sources—physicians, hospitals, and clinics—must be aggressively pursued by State agencies and reliance cannot be exclusively on a consultative mental exam. The Social Security Administration must also see to it that the State agencies have the resources to carry out these difficult determinations. Special procedures and units to see to it that claimants are located and adequately represented may need to be instituted at the State agency level.

(b) Extending period of appeal to reconsideration

A related provision to improve the reconsideration lengthens the time that is allowed for a timely appeal of the denial of benefits. Under current law an individual has 60 days in which to appeal an

initial denial or termination of benefits. Particularly in initial decisions, the appeal is often pro forma and done with great speed. The result is that the reconsideration record reflects very little evidence other than that medical and vocational information which existed at the first consideration. The Committee bill would extend the appeal period from 60 to 180 days in disability cases. This will give the claimant and attorney more time to evaluate the case and assess the claimant's condition after a more substantial time lapse following the initial decision. It is hoped that this provision will help make the appeals process less redundant.

SECTION 6. REVIEW OF DISABILITY DECISIONS

(a) Own-motion review of ALJ decisions

In its hearings in 1979 on the disability amendments, the Subcommittee on Social Security expressed its concern with a situation where there had been no review of ALJ reversals of State agency denials for almost 5 years. At that time Commissioner Stanford Ross stated he would reinstitute "own-motion" review by administrative action, and a legislative requirement was not put in the bill then pending before the Committee. When the administrative action was not taken by the Social Security Administration by 1980, the Congress included a provision in the 1980 disability amendments (Bellmon Amendment) requiring the Secretary of Health and Human Services to implement a program of own-motion review of decisions rendered by ALJ's as a result of hearings involving disability claims and report on the progress of the re-instituted review by January 1, 1982.

SSA implemented such a program on October 1, 1981, under which 7½ percent of all Social Security and concurrent Social Security-SSI disability allowances made by ALJ's were reviewed; in April 1982, SSA increased its review to 15 percent of those decisions. In order to promote uniformity and consistency in the decision-making process, your Committee believes that a higher percentage of ALJ decisions should be reviewed because of (1) the extremely high ALJ reversal rate (about 58 percent in fiscal year 1981) of disability determinations by State agencies, and (2) the findings in the Secretary's recent Bellmon report to the Congress on the own-motion review program. In the study of own-motion review, two groups reviewed 3,600 decisions made by ALJs. One group, which applied the POMS, found that the State agency decision was correct in 87 percent of the cases while the other group, which applied the standards governing the ALJs, found the State agency decision was correct in 52 percent of the cases. (The study found that a primary reason for the variation in the percentages was the different decision-making criteria used by the two groups. This problem is discussed in the next section.) This data indicates that there is a serious and substantial lack of uniformity between decisions made by the State agencies and by the ALJ's. Accordingly, your Committee's bill would require SSA to review at least 15 percent of favorable ALJ decisions on Social Security disability claims in fiscal year 1982 and at least 25 percent in each year from fiscal year 1983 through fiscal year 1987. This review will be conducted in the Office of Hearings and Appeals by the Appeals Council. Since only a

few months remain in fiscal year 1982, your Committee believes that SSA's April 1 move to 15-percent review should be considered as substantially complying with this provision.

(b) Review of State agency decisions

The 1980 amendments also included a provision requiring SSA to review, before payments are made, 35 percent of all favorable State agency decisions in fiscal year 1982 and 65 percent thereafter. In a report on this review which was submitted to the Congress last year, and in the budget for fiscal year 1983, the Administration recommended that the 65-percent review required beginning in fiscal year 1983 not be implemented for a number of reasons. The basis for this recommendation was that a 65-percent review would (1) require a significant increase in Federal and State staff to conduct the reviews, (2) create a shortage of needed medical consultants, (3) result in a decline in the proportion of erroneous allowances detected because the current level of review is targeted on the most error-prone cases, and (4) result in delays in making benefit payments because of the significant workloads involved. Your Committee agrees that the review should not be increased to 65 percent at this time but that a substantial review of State agency cases should continue. However, to promote uniformity in disability determinations and to eliminate any possibility of bias that might occur because denials are not reviewed, your Committee believes that unfavorable, as well as favorable, decisions should be reviewed. Therefore, your Committee's bill requires SSA to review at least 10 percent of all State agency disability determinations (allowances and denials combined) in fiscal year 1983 through fiscal year 1987—before the decisions are effectuated—with at least one-sixth of the reviewed cases to be denials.

The requirements in your Committee's bill for review of ALJ reversals and review of State agency decisions will expire after fiscal year 1987. The expiration of these specific review requirements should not, however, be construed as precluding continuation of such reviews to the extent the Secretary finds that ongoing review is consistent with effective and efficient program administration. The authority to make such own-motion reviews has always existed in the law.

SECTION 7. UNIFORM STANDARDS FOR DISABILITY DETERMINATIONS

One of your Committee's major concerns about the disability determination process is the lack of uniformity in disability decisions made at the various adjudicative levels, particularly between those made by the State agencies and those made by administrative law judges (ALJ's) at the hearings level. In fiscal year 1981, the ALJ's reversed about 58 percent of the roughly 200,000 Social Security and concurrent Social Security-SSI disability cases that had been appealed because a State agency had either denied claim or terminated disability benefits. Several reasons have been advanced for this very high rate of reversal, including the fact that ALJ's have direct face-to-face contact with the claimants while the State agencies do not; that additional evidence is sometimes available to the ALJ that was not available to the State agency; and that the individual's medical condition may have worsened by the time the cases get to the ALJ, or that a new impairment might by then exist. However, none of these differences between the two processes fully explains the variations in results.

Your Committee believes that a large portion of these variations in decision-making results because the State agencies and the ALJ's have been making disability decisions on the basis of different criteria. In adjudicating disability claims, the State agencies are required to use a detailed set of administrative instructions known as the Program Operating Manual System (POMS). These instructions amplify and interpret the Social Security law and regulations and the Social Security Rulings. The POMS contain specific standards and procedures with which the State agency must comply in making disability determinations; it is intended to ensure uniformity of State agency and SSA operations.

Although the State agencies must use the standards in the POMS in making disability determinations, the ALJ's are not bound by the POMS and do not use it in making disability decisions. Instead, ALJ's rely on the Social Security law and regulations, the Social Security Rulings, and the Office of Hearings and Appeals Handbook to adjudicate disability claims. (It appears that substantial numbers of ALJ's are not following the regulations in allowing cases under a special "residual functional capacity less than sedentary." This departure from the sequential evaluation of disability appears to have created a new type of medical allowance at a level less severe than either "meets" or "equals" the listings of medical impairments which is required by the regulations.) As a result, the ALJ's and the State agencies may be using different criteria to adjudicate disability claims in some significant policy areas. As noted in the preceding section, the Department concluded in the Bellmon report that a primary reason for the different decisions was the different criteria used. The report submitted this year stated:

A major finding of the initial review was that the standards for deciding disability claims are applied differently at the various levels of adjudication. SSA has concluded that a significant contributing factor to this difference is that ALJ's base their individual interpretations of the statute, applicable regulations, and Social Security Rulings without benefit of the guidance and clarification provided in the POMS, which is used by the prehearing level adjudicators. We are persuaded that all adjudicators must be provided, and required to adhere to, a consistent set of adjudicatory standards.

Your committee notes that SSA has already taken steps to promote uniformity by issuing a series of Social Security Rulings, which are binding on both state agencies and ALJ's, setting out specific standards for making disability decisions. These rulings contain standards which are incorporated in the POMS and which were not previously binding on ALJ's. As to court cases, the Social Security Administration maintains that a district or circuit court decision is binding only in the specific case it decides. The Social Security Administration may acquiesce in an adverse court decision by issuing a regulation or ruling, binding upon components. If a decision of a district court or circuit court establishes certain procedural or evidentiary requirements, the administrative law judge is required to make a reasonable effort to follow the court's views when handling similar cases. However, if a district or circuit court's decision contains interpretations of the law, regulations, or rulings which are inconsistent with the Secretary's

interpretations, the administrative law judge is required to follow the Secretary's interpretations.

To promote uniformity of disability decision-making, your Committee believes that it is essential that the same standards be used at all levels of the adjudicative process. Accordingly, a provision has been included in your Committee's bill which requires the Secretary to assure that uniform standards are used at all levels of adjudication in making Social Security and SSI disability determinations. Current SSA initiatives such as issuing a set of Social Security Rulings, which will constitute the disability standards for all levels of adjudication, move in the direction of assuring greater uniformity. Nevertheless, your Committee believes that this approach should be fully reflected in the statute itself.

The uniform standards to be made applicable should be promulgated in a manner at least as formal as those in the POMS. It also should be clearly understood that the order of priority in binding effect is, namely, the regulations, the Social Security Rulings, and the POMS. However, the Committee realizes that the ALJs make their determinations on the basis of the regulations and the Social Security rulings, and the State agencies make their decisions based upon the POMS. The intent of this section is that the same standards shall apply at all levels of adjudication and the Social Security Administration should continue its present efforts to meet this objective.

The Committee believes that it is essential that the uniform adjudicatory guidelines be made available to the public in a usable form. Also it is expected that knowledgeable groups and individuals be consulted in preparing these important adjudicatory standards even when setting guidelines outside of the regulations promulgation process.

SECTION 8. EVALUATION OF PAIN

The Social Security law has never been explicit about how pain should be evaluated in making Social Security disability determinations. This has resulted in decisions in some cases, especially at the ALJ level, being based on subjective reports of pain. These decisions often reflect the district and circuit court decisions on pain which vary throughout the country.

Your Committee believes that including an explicit statement in the law on the evaluation of pain and on the effect of subjective testimony about pain and similar symptoms will result in more uniform and consistent decisions among the courts and between the State agencies and the ALJ's. Accordingly, your Committee's bill would require medical signs and findings, established by medically acceptable clinical or laboratory diagnostic techniques, which show the existence of a medical condition that could reasonably be expected to produce the pain or symptoms alleged. The bill also provides that an individual's statement as to pain or other symptoms will not, by itself, be conclusive evidence of disability. This provision is intended to reinforce and underscore the criteria for evaluating pain now set out in regulations, the Social Security Rulings, and the POMS.

SECTION 9. SUBSTANTIAL GAINFUL ACTIVITY AND TRIAL WORK

Under present law, the Secretary of Health and Human Services has the regulatory authority to establish earnings guidelines for determin-

ing (1) whether a person is engaging in substantial gainful activity (SGA) and (2) what constitutes a month of trial work for a person who returns to work despite an impairment. Under regulations issued by the Secretary, when a person has monthly earnings exceeding \$300, he is considered to be engaging in SGA. This has been the standard since January 1980. Similarly, when a person earns at least \$75 a month, that month is counted as a month of trial work. This standard has been in existence since January 1979. These earnings guidelines apply to both the Social Security and SSI disability programs.

Your Committee is concerned that the amounts of earnings used in determining whether an individual is able to engage in SGA and what constitutes a month of trial work have lagged behind increasing national wage levels. The Social Security definition of disability is such that if the SGA level is not updated the result is a deliberalization of the disability program. Similarly, the amount that triggers the utilization of any of the nine trial work months available to a disabled individual would be more representative of a work attempt if the amount were kept current with economic changes.

Your Committee's bill would provide for revising the monthly SGA level and the monthly amount that is considered a month of trial work beginning in January 1983. The SGA and trial work monthly amounts would be increased based on increases in average covered earnings using the same measurement procedures that are used under present law to update the earnings test monthly amount for people under age 65.

SECTION 10. PROHIBITION AGAINST INTERIM PAYMENTS BEFORE A FINAL DETERMINATION IS MADE

Present law does not authorize the payment of Social Security benefits from the Social Security trust funds until a final decision is made on an application for benefits. Nevertheless, a number of courts have ordered SSA to make interim payments to claimants before hearing decisions are issued. As of May 1, 1982, there were seven separate court orders requiring interim disability payments. Six of these court orders apply only in the areas under the jurisdiction of the court, but the seventh, issued in *Blankenship et al. v. Califano*, requires SSA to publish regulations establishing time limits for making hearings decisions and to pay interim benefits nationwide in cases in which the time limits are not met. (At this writing, the *Blankenship* case has been stayed by the Court of Appeals.)

To make clear that these interim payments are not permitted, your Committee's bill would include in the Social Security law an explicit prohibition against paying interim Social Security benefits before a final determination is made on an application for benefits.

Your Committee believes that a disability claimant is entitled to a timely hearing and decision on his appeal, but it also recognizes that the time needed before a well-reasoned and sound disability hearing decision can be made may vary widely on a case-by-case basis. (It is also interesting to note that the mean processing time for disability cases in some District courts is as high as five years and nationwide stands at an average of 12 months.) Additional time may be required

in some cases because, for example, updated, comprehensive medical reports are needed from a claimant's treating physicians or it is necessary to have a consulting medical specialist examine the claimant. Establishing strict time limits for the adjudication of every case could result in incorrect determinations because time was not available to obtain needed medical evidence or to reach well-reasoned decisions in difficult cases. SSA has recently undertaken several administrative actions to improve the timeliness of hearing decisions, such as expanding its ALJ corps and support staff, improving staff training, and installing modern equipment in hearing offices to ensure the efficient use of their resources. Your Committee will continue to emphasize and support improvements in the administrative structure and the maintenance of an adequate staff so that reasonable case-processing times exist at all levels of adjudication.

SECTION 11. IMPROVEMENTS IN DISABILITY OFFSET PROVISIONS

The law provides that the Social Security disability benefits of a worker who is also entitled to workers' compensation payments or benefits from certain other public programs on account of disability are reduced, if necessary, so that the total disability benefits payable do not exceed the worker's predisability earnings. Last year, in budget reconciliation legislation (Public Law 97-35) a number of changes in this offset provision were enacted which had certain unintended effects. Your Committee's bill amends those provisions to rectify the problems which have arisen and to make the provision easier to administer and more equitable.

Public Law 97-35 provided that the disability offset would apply up to age 65 (rather than up to age 62 as under prior law) for workers who were not yet age 62 and who became disabled in March 1981 or later. Workers not yet age 62 who became disabled before March 1981 were inadvertently excluded from the provision. As a result, there are situations where two disabled workers, both under age 62 and both now having their Social Security disability benefits offset, will be treated differently when they become age 62. The worker who became disabled in, say, March 1981 will have his benefits offset until he becomes age 65, but the benefits of the worker who became disabled in February 1981 will be offset only up until he becomes age 62. Your Committee's bill corrects this oversight by extending the time period of the offset to age 65 for those persons who became disabled before March 1981 and who attain age 62 after this bill is enacted. Treating all workers the same will not only make this provision more equitable but also make the provision easier to administer.

Present law also provides that a person who is concurrently entitled to both a disability insurance benefit and a reduced retirement insurance benefit may elect to receive either one of those benefits. In the past, a worker usually elected to receive disability benefits because the monthly benefit was higher than the reduced retirement benefit. However, the law was changed in 1980 to limit the total family benefits payable in disability cases and to suspend disability benefits payable to prisoners. In the 1981 reconciliation legislation, further amendments extended the worker's compensation offset provision to include

certain other public disability benefits and to make the offset apply to disability benefits after age 62. As a result, workers entitled to both disability and reduced retirement benefits have been electing to receive reduced retirement benefits more frequently. This creates an unfair advantage for such workers because, when these workers become age 65, their retirement benefits are increased by eliminating the reduction due to receiving retirement benefits for months before age 65 on the grounds that they were technically entitled to disability benefits for those same months. Your Committee believes that if a person elects reduced retirement benefits in order to avoid the limitations on disability benefits mandated by the Congress, the person's retirement benefits should not be increased at age 65 based on the fact that the person had technically been entitled to Social Security disability benefits. Accordingly, your Committee's bill continues after age 65 the reduction in retirement benefits for people who elected to receive reduced retirement benefits rather than disability benefits.

The Committee's bill repeals the average monthly wage method of computing average current earnings in the disability benefit offset provision but liberalizes the method of computing "average current earnings." The average monthly wage (AMW) method is one of three methods in current law for determining an individual's average current earnings for purposes of the disability offset provision. It is only applicable in about 10 percent of the cases but must be computed in all dual benefit cases. It would be eliminated for administrative simplification purposes. Also in computing "average current earnings" under current law only a person's earnings from employment covered by Social Security are taken into account. If he has earnings from non-covered employment in his work history, they are not considered. The Committee bill provides that the computation of "average-current earnings" would be determined using both covered earnings (as under present law) and non-covered earnings occurring in the year of disability and the five preceding calendar years, if their existence can be shown by the worker. This would be effective for benefits paid after enactment.

Your Committee's bill also makes a technical change to clarify that benefits received on account of disability which were subject to offset prior to the enactment of Public Law 97-35 will continue to be subject to that offset.

SECTION 12. PAYMENT OF COSTS OF REHABILITATION SERVICES FROM TRUST FUNDS; EXPERIMENTS AND DEMONSTRATION PROJECTS

Background

The 1981 budget reconciliation legislation (Public Law 97-35), which became effective on October 1, 1981, provides that State vocational rehabilitation (VR) agencies may be reimbursed only for the costs of VR services provided to disabled Social Security or Supplemental Security Income (SSI) beneficiaries that result in the beneficiary's performance of substantial gainful activity (SGA) for a continuous period of at least 9 months. Before Public Law 97-35 was enacted, the Secretary of Health and Human Services was authorized to transfer from the Social Security trust funds each year up to 1.5

percent of the total amount of Social Security benefits paid to disability beneficiaries. In addition, general revenue funds were appropriated each year for the purpose of providing VR services to disabled or blind SSI recipients. These funds were used to cover the costs incurred by the States in attempting to rehabilitate disabled Social Security and SSI beneficiaries.

In fiscal year 1980, VR expenditures from the Social Security trust funds for disabled Social Security beneficiaries were about \$110 million (far below the limit of 1.5 percent of benefits) and approximately \$50 million from general revenue funds were used for SSI recipients—a total of about \$160 million overall. The changes in funding made by Public Law 97-35 became effective beginning fiscal year 1982, and SSA has estimated that only \$2 million will be spent from the Social Security trust funds for rehabilitating disabled Social Security beneficiaries and \$1.5 million from general revenues for rehabilitating SSI disability beneficiaries. The effect is to reduce services for the beneficiary group at a time when the program for the severely disabled under the Rehabilitation Act of 1973 has been greatly reduced. Your Committee is concerned that unless additional funds are available to the States specifically for the purpose of providing rehabilitation services to disabled Social Security and SSI beneficiaries, the number of disabled Social Security and SSI beneficiaries served will be seriously curtailed. These reductions could be counterproductive because, if fewer disabled Social Security and SSI beneficiaries are rehabilitated more money will be expended to pay them benefits. A benefit cost study completed by the Social Security Administration in 1981 found that savings to the trust funds were between \$1.39 and \$2.72 for each \$1 spent in 1975 on the rehabilitation of trust fund beneficiaries. Therefore, the beneficiary rehabilitation program, even prior to the 1981 reconciliation amendments, was shown to be cost effective.

Rehabilitation services for beneficiaries

Your Committee is recommending a number of changes which are intended to revitalize the VR program for disabled Social Security and SSI beneficiaries, while still emphasizing the objective that individuals be returned to productive activity to the end that savings will accrue to the trust funds and general revenues.

Costs of evaluations for all beneficiaries referred for vocation rehabilitation services are to be payable. These services will focus on diagnostic and other evaluative procedures required to determine employment potential and to determine which other rehabilitation services are needed to achieve appropriate employment as set forth in section 7(5) of the Rehabilitation Act of 1973, as amended (without the extended evaluation as described under subsection (G)). Evaluation services are not intended to be of an extended nature nor to include training, restoration or other services which may be integral to the overall rehabilitation effort. The Commissioner of Social Security will determine the specific types of evaluation services to be payable in accordance with this intent.

Payments for extended evaluation services (as described in section 7(5)(G) of the Rehabilitation Act) will be made in cases which qualify for payment under the other provisions contained in proposed section 222(d)(1) of the Social Security Act.

The bill continues the provision in current law which requires payment for rehabilitation services resulting in 9 continuous months of employment at the level of SGA. Payment will also be made under the other provisions described herein.

Payment is to be made for vocational rehabilitation services resulting in recovery from a disabling physical or mental impairment whether or not the beneficiary was scheduled for medical re-examination. To qualify for such payment, the individuals need not perform nine continuous months of SGA.

Payment is to be made for rehabilitation services to beneficiaries who, without good cause, refuse to continue to accept services, or who fail to cooperate in the rehabilitation process such that successful completion is precluded.

The bill also makes clear it is the intent of Congress that payments for eligible rehabilitation services, based on reasonable estimates, will be made to service providers in advance or, at the election of the recipient, by way of reimbursement. Necessary adjustments for overpayments and underpayments will take place in subsequent transfers of funds.

The bill authorizes the Commissioner of Social Security to use public and for-profit and nonprofit private providers of VR services in addition to State VR agencies. All service providers will participate under the same payment criteria. Under present law, the Commissioner can use other providers only if a State VR agency is unwilling to participate in the program for rehabilitating Social Security and SSI beneficiaries or does not have a VR plan that meets the requirements of the Rehabilitation Act of 1973.

The Commissioner of Social Security shall require each State and each private rehabilitation agency participating in the payment program to provide periodic reports on payments made and services furnished under the beneficiary rehabilitation program. The Commissioner shall use the information so obtained to prepare an annual report to Congress regarding the costs and benefits of the program, including total payments and numbers of persons served under each of the payment criteria.

The Committee intends that the Commissioner of Social Security and the Commissioner of the Rehabilitation Services Administration work together so that the expertise of both agencies can be effectively utilized in meeting program objectives.

Temporary program for terminees

Your committee also believes that beneficiaries who have been on the disability rolls for a number of years may need some help in getting back to work when their disability benefits are terminated on the basis of medical recovery. Therefore, the bill would also establish a temporary VR program for fiscal years 1983 and 1984, to be administered by the Rehabilitation Services Administration. This program will be funded from the Social Security trust funds, but expenditures are not to exceed \$15 million each year. Unobligated amounts at the end of a fiscal year shall revert to the trust funds.

In order that as many persons as possible may be assisted, this temporary program is not intended to provide the full range of compre-

hensive rehabilitation services. This program will provide evaluation, job-placement, and other services necessary to secure employment for persons whose Social Security disability benefits were terminated due to medical factors. States may contract with private for-profit and nonprofit organizations for the provision of such services. The Commissioner of the Rehabilitation Services Administration shall require data from State agencies necessary to prepare an annual report to the Commissioner of Social Security and to Congress regarding the use of funds and effectiveness of the program.

The special program would be terminated at the end of fiscal year 1984, because by that time the review of the existing disability rolls mandated by the 1980 disability amendments is expected to be completed and regular, ongoing review procedures should be implemented.

Persons terminated from the SSI benefit rolls due to medical recovery will not be included in this program.

Repeal of provision

The bill repeals the current-law provision that continues Social Security disability insurance benefits after unanticipated medical recovery of people who are participating in the VR program at the time they recovered. Persons already receiving extended payments at the time that this provision becomes effective will not be affected by this repeal.

In as much as we are establishing a VR program for Social Security termines, it does not appear this program requires continuation. This repeal does not affect SSI termines because they are not included under the new Social Security termines program.

Referrals for rehabilitation services

The bill amends the referral procedures under section 222(a) of the Social Security Act to facilitate: (1) the participation of private VR agencies in addition to State VR agencies in the beneficiary rehabilitation program under proposed section 222(d) (1) of the Social Security Act and in the demonstration projects under section 505(a) of the Social Security Disability Amendments of 1980; (2) referrals during the temporary program under proposed section 222(d) (2) of the Social Security Act.

Referrals for VR services of all other applicants for Social Security disability insurance benefits will continue to be made to the State VR agencies.

Demonstration projects

Your Committee also believes that attention needs to be given to develop more innovative ways of providing VR services to disabled beneficiaries in order to improve the number of successful rehabilitations so that more people can leave the benefit rolls and return to productive work. To this end, your Committee's bill would amend the authority for demonstration projects provided under section 505 of Public Law 96-265 to require the Secretary of Health and Human Services to undertake, within 18 months of enactment of this bill, at least ten experiments or demonstration projects (with at least one project begun in each of five States) on how best to use private for-profit and nonprofit organizations to provide VR services to disabled Social Security beneficiaries. Some projects are to compare private and State agency operations and some State vocational rehabilitation participa-

tion is appropriate. SSA is required to report to the Congress within 18 months on these experiments and projects.

It is also the Committee's intention that, by the authority granted in section 505(a) of the Social Security Disability Amendments of 1980, the Secretary of Health and Human Services (through the Social Security Administration) shall develop and carry out experiments or pilot studies aimed at testing the use of a computer-based information system to assist disability beneficiaries and claimants in evaluation of impairments for rehabilitation purposes.

The objective is to test in the field how best to establish a computer-based information system to assist in rehabilitation. It also should be useful in determining and obtaining the training necessary to return beneficiaries or claimants to work in cases where that is possible and feasible, by assessing the particular abilities and disabilities of individual beneficiaries in a designated community, region, or the national economy; by matching abilities with occupational descriptions, and by listing specific jobs in a community, region or the national economy which beneficiaries or claimants could perform appropriately despite impairments and with or without further training.

The pilot studies also should test specific techniques to insure that the potential abilities of claimants and beneficiaries are used to the maximum, and are directed toward suitable rehabilitation services leading to a return to productive employment. The vocational and medical information used to formulate the basis for a disability decision should be used as an evaluation tool for rehabilitation planning. An "ability profile" should be generated which would indicate immediate job placement possibilities, the potential for training, job restructuring, physical restoration, education, etc. Rehabilitation evaluation information should be used to formulate concrete plans for "conditioned rewards" aimed at assuring that disability applicants follow reasonable prescribed treatment which can restore the ability to work.

The information system should, among other things, be capable of providing rehabilitation evaluation information appropriate to State and private rehabilitation providers.

Further, it is the intent of the Committee that the Secretary shall submit to the Congress no later than January 1, 1985, a report on the experiments and demonstration projects described in this section of the committee report together with any related data and materials deemed appropriate. The demonstration project should be conducted for the period of one year.

V. SECTION-BY-SECTION ANALYSIS OF THE BILL

SECTION 1. SHORT TITLE

Section 1 provides the short title and table of contents of the Disability Insurance Amendments of 1982.

SECTION 2. CONTINUED PAYMENT OF DISABILITY BENEFITS DURING APPEAL

Section 2(a) of the bill amends section 223 of the Social Security Act by adding a new subsection (g) that permits individuals receiving benefits based on a disability to elect to have their benefits (and the benefits of their dependents) under the Act continue for a period be-

ginning with the first month the benefits otherwise would no longer be payable until the earlier of (1) the month before the month a reconsideration decision is made that a person's impairment has ceased, or did not exist (or is no longer disabling), or (2) the sixth month after the month of notification of the initial decision that the person was no longer entitled to benefits. The Secretary is directed to prescribe, by regulations, the procedures an individual will use to elect continued benefit payments. Section 2(a) further provides that monthly benefits paid under title II of the Act under this procedure are to be considered overpayments (unless they can be deemed to be adjustment benefits payable under section 3(a) of the bill) subject to recoupment, if the reconsideration decision affirms that the individual is no longer entitled to disability benefits.

Section 2(b)(1) of the bill provides that the amendment made by section 2(a) shall apply to termination decisions made on or after the date of enactment of this bill.

Section 2(b)(2) of the bill removes, effective January 1, 1984, the provision limiting continued payment of benefits to 6 months after the month of notification of the initial termination decision.

SECTION 3. ADJUSTMENT BENEFITS

Section 3(a) of the bill amends section 223(a) of the Social Security Act by adding a new paragraph (3). Paragraph (3)(A) provides for 4 additional months of benefits based on disability under the Act to people who have been receiving such benefits for at least 36 consecutive months and whose impairment is determined on or after enactment of this bill before January 1, 1985 to have ceased, not to have existed or to be no longer disabling (along with any benefits payable to their dependents). Paragraph (3)(B) specifies that the monthly benefits described in paragraph (3)(A) are not payable for any month which the person is determined to have engaged in substantial gainful activity or is entitled, or would upon filing an application be entitled, to any other type of title II monthly benefit.

Section (3)(b)(1) of the bill amends section 223(a)(1) of the Social Security Act to provide that the month disability benefits will end is subject to the amendments made by sections 2, 3 and 4 of this bill.

Section (3)(b)(2)(A) of the bill amends subsections (b)(1), (c)(1), (d)(1), (e)(1), and (f)(1) of section 202 to provide that the ending month for benefits under those subsections are subject to the amendments made by sections 2, 3, and 4 of this bill.

Section (3)(b)(2)(B) of the bill amends section 202(d)(6) of the Social Security Act to specify that the ending month of monthly benefits payable to people who become reentitled as adults disabled in childhood is subject to the amendments made by sections 2, 3 and 4 of this bill.

Section (3)(b)(3) of the bill adds a new subparagraph (H) to section 216(i)(2) of the Social Security Act that extends the duration of the period of disability to months for which benefits are payable under the amendments made by sections 2, 3 and 4 of this bill.

Section (3)(c) of the bill amends section 1631(a) of the Social Security Act by adding a new paragraph (7). Paragraph (7)(A)

provides that a disabled or blind SSI recipient who has been receiving monthly benefits for at least 36 months and whose impairment is determined, on or after enactment of this bill (or October 1, 1982, if later) and before January 1, 1985, to have ceased, not to have existed, or to be no longer disabled is entitled to adjustment benefits for 4 additional months. Paragraph (7)(B) specifies that the adjustment benefits described in (7)(A) are not payable for any month which the individual is determined to have engaged in substantial gainful activity.

SECTION 4. BENEFIT PAYMENTS NOT TO BE TREATED AS OVERPAYMENTS IN CERTAIN CASES

Section 4(a) of the bill further amends section 223 of the Social Security Act (as amended by section 2(a) of the bill) by adding a new subsection (h) that specifies that monthly benefits paid to any disabled individual (or otherwise payable under the Act on the basis of his earnings) prior to the month of written notification by a State agency or the Secretary that the individual's impairment either has ceased or does not exist or is no longer disabling are not to be considered overpayments for any of the purposes of title II. This amendment is effective for determinations made after enactment of this bill and before January 1, 1985.

Section 4(b) further amends section 223(g)(2) of the Social Security Act (as added by section 2(a) of the bill) to clarify that the amounts determined to be overpayments do not include benefits for months prior to the month of notice of termination.

Section 4(c) amends section 1631(b) of the Social Security Act by redesignating paragraph (3) as paragraph (4) and inserting a new paragraph (3) that specifies that monthly benefits to disabled or blind recipients paid prior to the month of written notification by a State agency or the Secretary that the individual's impairment has either ceased, or does not exist or is no longer disabling are not to be considered overpayments for any of the purposes of title XVI. This amendment is effective for determinations made on or after enactment of the bill (or October 1, 1982, if later) and before January 1, 1985.

SECTION 5. CLOSING OF THE RECORD ON APPLICATIONS INVOLVING DETERMINATIONS OF DISABILITY; DISABILITY DECISIONS, APPEALS, AND REVIEW

Section 5(a)(1) of the bill amends section 202(j)(2) of the Social Security Act to close the record in Social Security cases involving claims for disabled children's, disabled widows' or disabled widowers' benefits after the reconsideration decision, subject to the conditions specified in section 5(d)(1)(C) of the bill.

Section 5(a)(2) of the bill makes a conforming change to section 216(i)(2)(G) of the Social Security Act to close the record in disability freeze cases after the reconsideration decision.

Section 5(a)(3) of the bill makes a conforming change to section 223(b) of the Social Security Act to close the record in Social Security disability insurance cases after the reconsideration decision.

Section 5(b) of the bill amends section 205(b) of the Social Security Act to permit the Secretary to provide for reconsideration of Old Age

and Survivors Insurance claims and requires him to provide for reconsideration of Disability Insurance claims. The Secretary is required to conduct hearings on the record, and those hearings will be subject to the Administrative Procedure Act. The Secretary is authorized to appoint administrative law judges in accordance with section 3105 of title 5, United States Code, to conduct hearings in Social Security cases and issue decisions after such hearings.

Section 5(c)(1)(A) of the bill amends section 221 of the Social Security Act by changing its heading.

Section 5(c)(1)(B) of the bill amends section 221 of the Social Security Act by redesignating subsections (d), (e), (f), (g), and (i) as subsections (f), (g), (h), (i), and (j), respectively.

Section 5(c)(1)(C) of the bill amends section 221 of the Social Security Act by adding new subsections (d) and (e).

Paragraph (1) of the new subsection (d) provides that requests for reconsideration of a determination relating to disability or a period of disability must be filed within 180 days of the notice of the unfavorable determination, and that any such notice must include a discussion of the evidence and the reasons for the decision.

Subparagraph (A) of the new subsection (d)(2) provides that an individual is entitled to a new disability determination when he requests reconsideration.

Clause (i) of the new subsection (d)(2)(B) provides that States will have the option of making reconsideration decisions on disability terminations. If a State elected not to make such decisions or did not comply with Federal standards, SSA will make the reconsideration decision. (See section 5(e)(3)(B) for deadline on making election to make such decisions.)

Clause (ii) of the new subsection (d)(2)(B) provides that State agencies will make reconsideration determinations of disability in the same manner prescribed for making initial determinations, except that the claimant first must be afforded the opportunity for an evidentiary hearing at a location that is readily accessible to him and the hearings must be conducted by an adjudicatory unit of the State agency other than the unit which made the original determination.

Paragraph (3) of the new subsection (d) requires that the claimant must be notified of the reconsideration decision, including a discussion of the evidence and the reasons for the decision.

Paragraph (4) of the new subsection (d) requires the Secretary to issue regulations describing the reconsideration procedures that will apply to nondisability issues, that arise during the reconsideration of the disability determination.

Paragraph (5) of the new subsection (d) provides that documentary evidence submitted on or after the date of the reconsideration determination will not be accepted for the period covered by the reconsideration determination if such decision was made after opportunity was afforded for an evidentiary hearing and if the evidence could have been submitted before the date of the decision, but evidence relating to the individual's entitlement to benefits for any other period will be accepted in connected with any proceedings involving the reconsideration determination. This provision is only applicable to disability termination cases where an evidentiary hearing is required.

Paragraph (6) of the new subsection (d) provides for oral and written notification of the reconsideration procedure and that the claimant be advised of his right to be represented.

Paragraph (1) of the new subsection (e) provides that the claimant has 60 days in which to request a hearing on a reconsideration determination and that the Secretary will give the claimant reasonable notice and opportunity for a hearing.

Paragraph (2) of the new subsection (e) provides that the Secretary shall render decisions in hearings cases on the basis of the evidence considered in reaching the reconsideration decision and the testimony given at the hearing. These decisions shall be in accordance with the law, regulations, and written guidelines which the Secretary may prescribe to carry out the requirement of Section 7 of this Act to assure uniform standards.

Subparagraph (A) of the new subsection (e) (3) provides that, in cases where the claimant submits additional documentary evidence after the reconsideration and before the hearing, and where the evidence is otherwise prevented by subsection (d) (5) from being admitted or considered, the claim will be remanded to the maker of the reconsideration decision, unless the claimant makes the election described in subparagraph (B) of new subsection (e) (3).

Subparagraph (B) of the new subsection (e) (3) provides that the claimant may elect not to have his claim remanded under subparagraph (A) and, instead, to have the additional evidence disregarded for purposes of determining entitlement. This subparagraph also requires the Secretary to notify the claimant of the provisions of this paragraph and to allow reasonable time for the election.

Subparagraph (C) of the new subsection (e) (3) provides that in cases that are remanded, a new reconsideration determination will be made and that the individual will be notified of the decision and of his right to request a hearing.

Paragraph (4) of the new subsection (e) directs the Secretary to establish time limits for undertaking a review of hearing decisions. Decisions that are not reviewed will be considered final at the end of the established time period; decisions that are reviewed will be considered final at the end of the review.

Subparagraphs (A), (B), (C), and (D) of section 5(c) (2) of the bill make conforming changes to sections 221(b) (1), (b) (2), (b) (3) (A), and (b) (3) (B) of the Social Security Act.

Subparagraph (E) of section 5(c) (2) of the bill makes conforming changes in the redesignated subsection (f) of section 221 of the Social Security Act and adds a new paragraph (2) providing for judicial review of determinations under new subsection (c) as provided in section 205(g) of the Act.

Subparagraphs (F), (G), and (H) of section 5(c) (2) of the bill make conforming changes in the redesignated subsections (g), (i), and (j) of section 221 of the Social Security Act.

Paragraph (1) of section 5(d) of the bill amends section 1631(c) (1) of the Social Security Act to extend the time period for requesting a hearing in SSI cases involving disability or blindness from 60 days to 180 days after receipt of the notice of determination.

Paragraph (1) of section 5(e) of the bill provides the amendments made in section 5 of the bill apply to requests for reconsiderations filed

after the date of enactment of this bill, except as provided in paragraphs (2) and (3).

Paragraph 2 of section 5(e) provides that the provision to close the record after the reconsideration decision is made on the disability determination is effective with respect to applications for benefits filed after the date of enactment of this bill.

Paragraph 3(A) of section 5(e) provides an exception to the general effective date for section 5 as stated in paragraph 1. Reconsideration determinations involving an evidentiary hearing will be effective for requests for reconsideration filed on or after January 1, 1984.

Paragraph 3(B) of section 5(e) provides that reconsideration determinations involving an evidentiary hearing can be effective for a request filed earlier than January 1, 1984 if a State notifies the Secretary that it wishes to do so. If a State does not wish to conduct such evidentiary hearings, it must notify the Secretary of this decision by January 1, 1983, or otherwise the State will be deemed to have declined to conduct such hearings.

SECTION 6. OWN MOTION REVIEW; REVIEW OF STATE AGENCY DETERMINATIONS

Section 6(a) of the bill amends section 304(g) of the Social Security Disability Amendments of 1980 by providing that the Secretary will review at least 15 percent of all Social Security disability hearing decisions rendered by administrative law judges in fiscal year 1982 that individuals are, or continue to be, under disabilities; and to review at least 25 percent of all such decisions so rendered in any fiscal year after fiscal year 1982 and before fiscal year 1988.

Paragraph (1) of section 6(b) of the bill amends section 221(c) of the Social Security Act by striking out paragraphs (2) and (3) related to the statutory review levels and adding in lieu thereof the requirement that the Secretary will review at least 10 percent of all determinations made by State agencies under that section in any fiscal year after fiscal year 1982 and before fiscal year 1988, with at least one-sixth of all such determinations so reviewed being determinations that the individuals involved are not disabled. Any review by the Secretary of a State agency determination will be made before any action is taken to implement such determination.

Paragraph (2)(A) of section 6(b) of the bill makes a conforming change in section 221(c)(1) of the Act.

Paragraph (2)(B) of section 6(b) makes a conforming change in subsection (c)(1) of section 221, effective October 1, 1987, to delete the reference to paragraph (2) of that subsection.

Paragraph (3) of section 6(b) provides that, except for the amendment made by paragraph (2)(B), the amendments made by this section will be effective October 1, 1982.

SECTION 7. GUIDELINES FOR DISABILITY DETERMINATIONS

Section 7 of the bill amends section 205(a) of the Social Security Act to provide that the Secretary will assure that uniform standards will be used in making disability determinations at all levels of adjudication.

SECTION 8. EVALUATION OF PLAN

Section 8(a) of the bill amends section 223(d)(5) of the Social Security Act by providing an explicit statement in law as to the evaluation of pain. Under this change, a finding of disability may not be based on the allegation of symptoms of pain alone but must be supported by medical signs and findings based on established clinical or laboratory diagnostic techniques.

Section 8(b) provides that this amendment will be effective with respect to determinations of disability made on or after the date of enactment.

SECTION 9. SUBSTANTIAL GAINFUL ACTIVITY AND TRIAL WORK

Section 9(a) of the bill amends section 223(d)(4) of the Social Security Act by providing for the automatic indexing of the substantial gainful activity dollar amount (now \$300) for title II purpose in the same way as the earnings test monthly exempt amount for people under age 65 is indexed.

Section 9(b) of the bill amends section 222(c)(2) of the Social Security Act by providing for the automatic indexing of the monthly amount (now \$75) that is counted as a month under the trial work period provision for title II purpose in the same way as the earnings test monthly exempt amount for people under age 65 is indexed.

Section 9(c)(1) of the bill amends section 1614(a)(3)(D) of the Social Security Act by providing for the automatic indexing of the substantial gainful activity dollar amount for SSI purposes in the same way as the earnings test monthly exempt amount for people under age 65 is indexed.

Section 9(c)(2) of the bill amends section 1614(a)(4)(A) of the Social Security Act by providing for the automatic indexing of the monthly amount that is counted as a month under the trial work period provision for SSI purposes in the same way as the earnings test monthly exempt amount for people under age 65 is indexed.

Section 9(d) of the bill provides that the amendments made by this section of the bill will be effective with respect to months after December 1982.

SECTION 10. PROHIBITION AGAINST INTERIM PAYMENTS

Section 10 of the bill amends section 205 of the Act to provide a new subsection (r) specifying that no benefits will be paid to any individual applying for benefits under title II of the Act until a final determination of his (her) entitlement to such benefits has been made.

SECTION 11. AMENDMENTS RELATING TO REDUCTION IN DISABILITY INSURANCE BENEFITS ON ACCOUNT OF OTHER RELATED PAYMENTS

Section 11 of the bill includes amendments, of a technical and perfecting nature, to current law provisions relating to disability offset.

Section 11(a) amends section 2208(b) of Public Law 97-35 to make the disability offset applicable up to age 65 for persons who attain

age 62 after the enactment date of this bill, even though they became disabled within the meaning of section 223(d) of the Social Security Act before March 1981.

Section 11(b) amends subparagraph (F) of paragraph (7) of section 202(q), Reduction of Benefit Amounts for Certain Beneficiaries, of the Social Security Act to continue the reduction in retirement insurance benefits at age 65 for people who elected to receive reduced retirement insurance benefits for months in which they were concurrently entitled to disability insurance benefits.

Section 11(c) amends paragraph (2) of section 224(a), Reduction of Benefits Based on Disability, of the Social Security Act to provide that benefits which were subject to the workers' compensation offset provision prior to the enactment of Public Law 97-35 will continue to be subject to the disability offset.

Paragraph (1) of section 11(d) of the bill amends section 224(a) of the Social Security Act by deleting clause (A) in the sentence immediately following paragraph (8). This change eliminates the average monthly wages method of determining a worker's average current earnings.

Paragraph (2) of section 11(d) of this bill redesignates clauses (B) and (C) in the sentence being amended by paragraph (1) of this section of the bill as clauses (A) and (B), respectively.

Paragraph (3) of section 11(d) of the bill removes the parenthetical phrases pertaining to sections 209(a) and 211(b)(1) of the Social Security Act in the sentence being amended by paragraph (1) of this section of the bill.

Paragraph (4) of section 11(d) of the bill adds a new sentence at the end of section 224(a) of the Social Security Act to provide that earnings from noncovered Federal, State, local and nonprofit employment in the 6-year period ending with the year in which the worker became disabled will be considered in computing the average current earnings for purposes of the disability offset. The new sentence also incorporates the substance of the parenthetical phrases pertaining to sections 209(a) and 211(b)(1) of the Social Security Act.

Section 11(e) of the bill provides that the amendments made by this section are effective in the same manner and as of the same time as they would have been if they had been included in section 2208(a) of Public Law 97-35, except that the amendment made by subsection (b) is effective only with respect to individuals who attain age 65 after the date of enactment of the bill, the amendments made by subsections (d) (1) and (2) are effective only with respect to individuals who first become entitled to disability insurance benefits for months beginning after the month the bill is enacted, and the amendments made by subsections (d) (3) and (4) are effective with respect to months beginning after the month in which the bill is enacted.

SECTION 12. PAYMENT OF COSTS OF REHABILITATION SERVICES FROM TRUST FUNDS; EXPERIMENTS AND DEMONSTRATION PROJECTS

Section 12 of the bill makes changes in the present law provisions relating to the programs providing vocational rehabilitation (VR) services to disabled Social Security and SSI beneficiaries and also to

experiments and demonstration projects that the Secretary of Health and Human Services is required to undertake to explore how best to use private agencies in providing such services.

Paragraph (1) of section 12(a) of the bill amends that part of section 222(d) of the Social Security Act which precedes paragraph (4) of that section.

The new subparagraph (A) of section 222(d)(1) permits SSA to use both State VR agencies and other public or private agencies to provide VR services to disabled beneficiaries. Authority is given to make payments to these agencies from the Social Security trust funds for the reasonable and necessary costs of these services. The Commissioner of Social Security will determine what VR services meet the requirements for payment and the amount to be paid.

The new subparagraph (B) provides that payment will be made for the cost of (a) evaluation services provided to disabled beneficiaries, (b) services that result in either recovery from a disabling physical or mental impairment or the performance of substantial gainful activity for at least 9 consecutive months, and (c) services provided to a disabled beneficiary who either refuses without good cause to continue to accept VR services or fails to cooperate so as to preclude his successful rehabilitation.

The new subparagraph (C) requires that SSA pay for VR services in advance unless the provider elects to be paid on a reimbursement basis.

The new subparagraph (D) provides that SSA may provide VR services in the States under regulations prescribed by the Secretary of Health and Human Services or by an agreement or contract with other public or private agencies.

The new subparagraph (E) requires the providers of the VR services to furnish the Commissioner of Social Security with periodic reports proving that payments made to these providers are used exclusively for furnishing VR services.

The new subparagraph (A) of paragraph (2) of section 222(d) of the Social Security Act establishes a temporary VR program in fiscal year 1983 and fiscal year 1984 administered by the Rehabilitation Services Administration and financed from the Social Security trust funds, with expenditures not to exceed \$15 million each year, to provide evaluation and job placement services through the State VR agencies to people terminated from the Social Security disability rolls on the basis of either medical recovery or a finding that no disabling impairment had existed.

The new subparagraph (B) of paragraph (2) provides that the payment for these services will be made in advance unless the State elects to be paid on a reimbursement basis.

The new subparagraph (C) of paragraph (2) requires the provider of these services to furnish the Commissioner of the Rehabilitation Services Administration with periodic reports satisfying him that payments made to these providers are used exclusively for furnishing VR services under this temporary VR program.

Section 12(a)(2) of the bill amends section 222(d) of the Social Security Act by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

Section 12(a)(3) of the bill amends section 222(a) of the Social Security Act to require that SSA refer for VR services those beneficiaries whose disability benefits are terminated on the basis of medical recovery or a finding that the impairment had not existed (or is no longer disabling).

Subparagraph (A) of section 12(b)(1) of the bill repeals section 225(b) of the Social Security Act. This eliminates the provision for continued Social Security benefits after medical recovery to people receiving VR services.

Subparagraph (B) makes conforming changes in section 225(a) of the Social Security Act.

Subparagraph (C) provides that the change made by section 12(b)(1)(A) of the bill will not apply to people receiving those continued payments as of its enactment.

Section 12(b)(2) of the bill makes changes to incorporate the provisions of the SSI program to those of the Social Security disability program as amended by section 12(a)(1) of this bill pursuant to proposed section 222(d)(1) of the Social Security Act.

Section 12(c)(1) of the bill amends section 505(a)(1) of Public Law 96-265 to require the Secretary of Health and Human Services to initiate experiments to determine how best to provide VR services to disabled beneficiaries through either profit or non-profit organizations.

Paragraph (2) of section 12(c) of the bill amends section 505(a)(2) of Public Law 96-265 to require SSA to undertake, within 18 months of enactment of this bill, at least 10 such experiments or projects, with one or more experiments or projects commencing in each of at least five States.

Paragraph (3) of section 12(c) of the bill amends section 505(a)(4) of Public Law 96-265 to require the Secretary to report to Congress within 18 months of enactment of this bill on those experiments and projects.

Paragraph (1) of section 12(d) of the bill provides that the amendments made by subsection (a) will be effective on the date of enactment of this bill, except that the changes relating to the VR services, other than evaluation services, will be effective with respect to services furnished after September 30, 1981, and the changes regarding the payment for evaluation services will be effective with respect to services furnished after September 30, 1982.

Paragraph (2) provides that the amendments made by subsections (b) and (c) will be effective on the date of enactment of this bill, except that the amendment made in the SSI program by subsection (b)(2) will be effective with respect to services provided after September 30, 1982.

VI. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

In compliance with clause 2(1)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote by your committee on the motion to report the bill, as amended. The bill was ordered reported by unanimous voice vote.

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of

the House of Representatives, the following statement is made relative to oversight findings by your committee. As a result of investigations conducted by the Subcommittee on Social Security, your committee concluded that it is necessary and desirable to provide some interim relief to beneficiaries during the first years of the "Continuing Disability Investigations" (CDI) process which was provided in the Disability Amendments of 1980 (Public Law 96-265). Your committee has also found during its oversight work of the past several years that there is an urgent need to strengthen uniformity in the disability adjudicative process.

In compliance with clause 2(1) (3) (B) of rule XI of the Rules of the House of Representatives your committee advises that enactment of H.R. 6181, as reported by your committee, would not result in any new budget authority or increased tax expenditures.

In compliance with clause 2(1) (3) (D) of rule XI of the Rules of the House of Representatives, your committee states that no oversight findings or recommendations have been submitted to your committee by the Committee on Government Operations with respect to the subject matter contained in the bill.

In compliance with clause 7 of rule XIII of the Rules of the House of Representatives, the following statement is made relative to the cost of carrying out this bill. The bill would not have any significant effect on the long-range cost of the social security program. The early year cost effects of the bill are shown in the letter from the Congressional Budget Office.

In compliance with clause 2(1) (4) of rule XI of the Rules of the House of Representatives, your committee states that enactment of H.R. 6181 will not have any inflationary impact on the national economy.

In compliance with clause 2(1) (3) (C) of rule XI of the Rules of the House of Representatives, the following report prepared by the Congressional Budget Office is provided:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 25, 1982.

HON. DANIEL ROSTENKOWSKI,
Chairman, Committee on Ways and Means, House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 6181, the Disability Amendments of 1982.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

RAYMOND C. SCHEPPACH
(For Alice M. Rivlin, Director).

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: H.R. 6181.
2. Bill title: Disability Amendments of 1982.

3. Bill status: As ordered reported by the Committee on Ways and Means on May 19, 1982.

4. Bill purpose: To amend Title II of the Social Security Act relating to Disability Insurance benefits to provide certain adjustment benefits for those deemed recovered from a disability; to continue benefit payments for a period during appeals of terminated cases; to provide for additional vocational training; and to provide for more uniformity in all levels of eligibility and appeals decisions. Selected provisions also apply to Title XVI of the Act relating to the Supplemental Security Income program.

5. Cost estimate: The following table shows the estimated costs of this bill to the federal government.

TABLE 1.—ESTIMATED TOTAL COSTS OR SAVINGS RESULTING FROM H.R. 6181

[In millions of dollars, by fiscal years]

	1983	1984	1985	1986	1987
Function 600:					
Budget authority	7	3	-2	-6	-3
Outlays	49	59	17	-27	-36
Function 550:					
Budget authority	1	2	0	-2	-2
Outlays	8	16	11	1	1
Total costs or savings:					
Budget authority	8	5	-2	-8	-5
Outlays	57	75	28	-26	-35

The costs from this bill fall within budget functions 550 and 600. The budget authority is the net result of lower interest income on lower trust fund balances for the Disability Insurance (DI) and Hospital Insurance (HI) programs, and required additional budget authority for the Supplemental Security Income (SSI) and Supplementary Medical Insurance (SMI) programs.

6. Basis for estimate: This estimate was prepared from a draft of the bill; the Congressional Budget Office has not received the official language of the requested bill.

CBO has reviewed the Social Security Administration's estimates of the costs or savings that would result from this bill as it pertains to the Disability Insurance program. These DI estimates appear reasonable and are shown in Tables 1 and 2. However, the estimates of the major provisions of the bill are subject to considerable uncertainty. This bill primarily affects those who are terminated from the disability rolls, and those who appeal decisions relating to the status of their disability, whether they have or have not yet received benefit payments. Hence, a number of assumptions about administrative actions and recipient behavior are required. The uncertainties involved in these estimates are discussed in the sections below.

All provisions with a cost impact are assumed effective at the start of calendar year 1983, except sections 3, 4, 6 and 12, which are assumed effective at the beginning of fiscal year 1983. In addition, several of the provisions also affect the SSI and Medicare programs, and the estimated costs of these provisions are also shown.

TABLE 2.—ESTIMATED OUTLAY COSTS OR SAVINGS BY PROVISION OF H.R. 6181
[In millions of dollars, by fiscal years]

	1983	1984	1985	1986	1987
Continue DI benefit during appeal (sec. 2):					
DI.....	10	5	5	5	5
HI and SMI.....	3	1	1	1	1
Add 4 mos. of benefits for long-term medically recovered beneficiaries (sec. 3):					
DI.....	15	40	25		
SSI.....	7	7	4		
HI and SMI.....	5	15	10		
Waive DI overpayment to medically recovered beneficiaries (sec. 4):					
DI.....	0	0	0	0	0
SSI.....	0	0	0	0	0
Review 10 percent of initial determinations, 15 percent and 25 percent at ALJ level (sec. 6):					
DI.....	-5	-15	-20	-30	-35
Raise SGA level (sec. 9):					
DI.....	0	0	0	0	0
SSI.....	0	0	1	1	2
Expand Vocational Rehabilitation (sec. 12):					
DI.....	25	25	10	10	10
SSI.....	2	2	2	2	2
Extend worker's compensation offset to 62 to 64 yr. olds, close evidence at reconsideration level, and other technical changes (secs. 5, 7, 8, 10, 11):					
DI.....	-2	-6	-12	-16	-19
Total ¹	57	75	28	-26	-35

¹ Includes interactions.

Section 2—Continued payment of disability benefits during appeal

This provision would allow terminated DI beneficiaries, who appeal their termination, to receive benefits for up to six months or until a hearing occurs through the reconsideration level. If the termination is upheld, then these benefits would have to be repaid. The actuaries estimate that this provision would cost \$10 million in fiscal year 1983, and \$5 million each year thereafter.

This estimate assumes that approximately 50,000 to 60,000 of the 400,000 to 450,000 Title II Continuing Disability Investigations (CDI's) (excluding concurrent Title II and Title XVI cases) scheduled for 1983 will result in terminations. Of these, it is assumed that about 25,000 beneficiaries who elect to receive benefits while they appeal would then have to repay these benefits. Terminated DI recipients receive benefits for about two to three months after they receive their termination notice. It is estimated that the reconsideration appeals process requires an additional two-thirds of a month beyond this, on average. This provision would allow benefit payments to continue during this entire period. Those who lose their appeal would have to repay these benefits. The cost estimate assumes one-half of these repayments would never be collected. The outyear estimates have the number of CDI's and terminations declining slightly. Under similar assumptions, Medicare costs would also increase somewhat.

This estimate is subject to some uncertainty. It is possible that all of the 40,000 to 50,000 recipients who lose appeals would request payment rather than the assumed 25,000, potentially doubling costs each year over the period. In addition, if fewer than 50 percent of these overpayments are collected, the costs could be even higher in the 1984

to 1987 period. (It is assumed that the repayments will occur in the year after the overpayments are made; thus, the outyear estimates are one-half of the 1983 cost.) On the other hand, if all who receive the continued payment do repay, then there would be no DI cost for this provision. Thus, the costs of this provision could range from \$0 million to \$20 million per year in each of the five years. Moreover, the number of CDI's anticipated over the 1982 to 1984 period may be large enough so as to reduce the need for further CDI's in future years. If this occurs, future terminations and appeals will be minimal, and the costs for those who don't repay will be less than shown in the outyears.

Section 3—Additional four months of benefits for long-term disability recipients who are medically terminated

This provision would permit an additional four months of benefits for those who have collected DI benefits for three years or more (including concurrent Title II and XVI cases) and who are then terminated for medical reasons. The provision would expire on January 1, 1985, and is estimated by the Social Security actuaries to cost \$15 million, \$40 million, and \$25 million in fiscal years 1983 to 1985, respectively. Continuation of Medicare benefits during the additional months of DI eligibility would increase Medicare spending by \$30 million over the three-year period.

Approximately 27 percent of the 600,000 to 650,000 CDI's the Administration expects to perform on Title II and concurrent Title XVI recipients in 1983 have been on the rolls for 36 months or longer. Of these, 13 percent are estimated to be terminated and receive an additional four months of benefits.

There is an interaction between this section and section 2, discussed above. If some of those who do not repay the benefits granted by section 2 are given additional benefits under this section, then there would be a \$1 or \$2 million reduction in the total estimated costs for this bill. This interaction is shown in the total cost given in Table 2.

This section also applies to Supplemental Security Income (SSI) beneficiaries. Based on an expected 173,000 CDI's in 1983, and using the assumptions noted for DI beneficiaries, SSI costs are estimated to be \$7 million, \$7 million, and \$4 million in fiscal years 1983 to 1985, respectively.

Section 4—Waive DI overpayments to medically recovered recipients

This provision would waive repayment by DI and SSI recipients of benefits paid to them between the time their disability was determined to have ceased by SSA and the time SSA notified them of such determination. There is no cost for this provision because this procedure has been included in recent administrative plans for 1983, and is therefore already included in the current estimates of the costs of DI and of SSI.

Section 6—Review at least 10 percent of initial determinations and review 15 percent in 1982 and 25 percent thereafter of administrative law judge reversals

This provision modifies the current law review of disability decisions in two ways. First, it requires that at least 10 percent of initial allowances and denials be reviewed each year, instead of the current

provision to review a minimum of 35 percent in 1982 and 65 percent thereafter of initial allowances only. Second, it requires a new review of 15 percent (in 1982) and of 25 percent (in 1983 through 1987) of all Administrative Law Judge (ALJ) reversals. There is no current similar review of ALJ decisions.

The Social Security Administration estimates that these two changes will save \$5 million in fiscal year 1983 rising to \$35 million in 1987, and a total of \$105 million in the five year period. It is assumed that the provision cannot be implemented in time to affect fiscal year 1982 costs or savings.

The total savings result from the ultimate denial of approximately 1,000 cases per year which were approved by ALJ's. No costs, however, are assumed from the lower number of initial reviews—which would result in fewer denials—because SSA has said it intends to maintain the initial review at the higher levels stated in current law. If SSA were to reduce the number of initial determinations reviewed to the minimum level of 10 percent, however, then the savings from this provision could be reduced by \$10 million in fiscal year 1983, and by \$145 million over the period. This would give a net cost to the provision.

Section 9—Raise substantial gainful activity level

This section mandates that the dollar amount above which a disabled recipient of DI or SSI is said to have worked—the substantial gainful activity (SGA) test—be raised automatically based on a wage index. Currently, the upper limit of this amount is \$300 per month. Under this provision, it will be raised to \$330 per month, and increased automatically thereafter.

This provision is estimated to have no cost in DI since it has been assumed that the SGA level would increase to this amount under current law. There is no initial cost to SSI because a current demonstration project effectively eliminates the SGA criterion in 1983 and part of 1984. Thereafter, costs are low because few SSI recipients have earnings that approach the SGA level.

Section 12—Expand vocational rehabilitation

This section has two separate vocational rehabilitation provisions pertaining to DI. This first expands vocational rehabilitation services for which federal funds can be used by permitting states to be compensated for additional evaluation services. This is expected by SSA to cost \$10 million per year over the 1983 to 1987 period. The second provision allows up to \$15 million in each of fiscal years 1983 and 1984 for evaluation and for placement services to individuals terminated from the DI rolls for medical reasons. If these two provisions have the effect of promoting recoveries above those currently assumed, then the costs may be slightly lower in the outyears. This impact has not been included in the DI estimate.

The first of the two provisions also applies to SSI. The SSI costs are estimated to be \$2 million per year over the 1983 to 1987 period.

Sections 5, 7, 8, 10, 11—Prohibit Interim Payments; Extend Workers' Compensation Offset; and Make Other Technical Changes

These provisions, which apply only to DI, would require that uniform standards of disability determinations be met at all levels of appeal, define in more detail the procedure to accept pain as a disabil-

ity criteria and prohibit benefit payments before a case has been resolved in a claimant's favor. In addition, Section 11 of the bill makes certain technical corrections in the "megacap" provision in the 1981 reconciliation bill which limits total disability payments an individual may receive, and changes the way this offset is computed. The savings from these provisions are estimated to total \$55 million over the 1983 to 1987 period.

7. Estimate comparison: The estimate for DI is identical to that of the Social Security Administration, Office of the Actuary, April 28, 1982 for DI. There is no official administration estimate for SSI or HI.

8. Previous CBO estimate: None.

9. Estimate prepared by: Stephen Chaikind, Malcolm Curtis, and Janice Peskin.

10. Estimate approved by:

C. G. NUCKOLS
(For James L. Blum,
Assistant Director for Budget Analysis Division).

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SOCIAL SECURITY ACT

* * * * *

TITLE II—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

* * * * *

OLD-AGE AND SURVIVORS INSURANCE BENEFIT PAYMENTS

Old-Age Insurance Benefits

SEC. 202. (a) ***

(b)(1) The wife (as defined in section 216(b)) and every divorced wife (as defined in section 216(d)) of an individual entitled to old-age or disability insurance benefits, if such wife or such divorced wife—

(A) has filed application for wife's insurance benefits,

(B) has attained age 62 or (in the case of a wife) has in her care (individually or jointly with such individual) at the time of filing such application a child entitled to a child's insurance benefit on the basis of the wages and self-employment income of such individual.

(C) in the case of a divorced wife, is not married, and

(D) is not entitled to old-age or disability insurance benefits or is entitled to old-age or disability insurance benefits based on a primary insurance amount which is less than one-half of the

primary insurance amount of such individual, shall (subject to subsection (s)) be entitled to a wife's insurance benefit for each month, beginning with—

(i) in the case of a wife or divorced wife (as so defined) of an individual entitled to old-age benefits, if such wife or divorced wife has attained age 65, the first month in which she meets the criteria specified in subparagraphs (A), (B), (C), and (D), or

(ii) in the case of a wife or divorced wife (as so defined) of—

(I) an individual entitled to old-age insurance benefits, if such wife or divorced wife has not attained age 65, or

(II) an individual entitled to disability insurance benefits, the first month throughout which she is such a wife or divorced wife and meets the criteria specified in subparagraphs (B), (C), and (D) (if in such month she meets the criterion specified in subparagraph (A)),

whichever is earlier, and ending (*subject to subsections (a) (3), (g), and (h) of section 223*) with the month preceding the month in which any of the following occurs—

(E) she dies,

(F) such individual dies,

(G) in the case of a wife, they are divorced and either (i) she has not attained age 62, or (ii) she has attained age 62 but has not been married to such individual for a period of 10 years immediately before the date the divorce became effective,

(H) in the case of a divorced wife, she marries a person other than such individual,

(I) in the case of a wife who has not attained age 62, no child of such individual is entitled to a child's insurance benefit,

(J) she becomes entitled to an old-age or disability insurance benefit based on a primary insurance amount which is equal to or exceeds one-half of the primary insurance amount of such individual, or

(K) such individual is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

* * * * *

Husband's Insurance Benefits

(c) (1) The husband (as defined in section 216(f)) of an individual entitled to old-age or disability insurance benefits, if such husband—

(A) has filed application for husband's insurance benefits,

(B) has attained age 62, and

(C) is not entitled to old-age or disability insurance benefits, or is entitled to old-age or disability insurance benefits based on a primary insurance amount which is less than one-half of the primary insurance amount of his wife,

shall be entitled to a husband's insurance benefit for each month, beginning with—

(i) in the case of a husband (as so defined) of an individual who is entitled to an old-age insurance benefit, if such husband has attained age 65, the first month in which he meets the criteria specified in subparagraphs (A), (B), and (C), or

(ii) in the case of a husband (as so defined) —

(I) an individual entitled to old-age insurance benefits, if such husband has not attained age 65, or

(II) an individual entitled to disability benefits, the first month throughout which he is such a husband and meets the criteria specified in subparagraphs (B) and (C) (if in such month he meets the criterion specified in subparagraph (A)),

whichever is earlier, and ending (*subject to subsections (a) (3), (g), and (h) of section 223*) with the month preceding the month in which any of the following occurs: he dies, his wife dies, they are divorced, or he becomes entitled to an old-age or disability insurance benefit, based on a primary insurance amount which is equal to or exceeds one-half of the primary insurance amount of his wife, or his wife is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

* * * * *

Child's Insurance Benefits

(d) (1) Every child (as defined in section 216(e)) of an individual entitled to old-age or disability insurance benefits, or of an individual who dies a fully or currently insured individual if such child—

(A) has filed application for child's insurance benefits,

(B) at the time such application was filed was unmarried and

(i) either had not attained the age of 18 or was a full-time elementary or secondary school student and had not attained the age of 22, or (ii) is under a disability (as defined in section 223(d)) which began before he attained the age of 19; and

(C) was dependent upon such individual—

(i) if such individual is living, at the time such application was filed,

(ii) if such individual has died, at the time of such death,

or

(iii) if such individual had a period of disability which continued until he became entitled to old-age or disability insurance benefits, or (if he has died) until the month of his death, at the beginning of such period of disability or at the time he became entitled to such benefits,

shall be entitled to a child's insurance benefit for each month, beginning with—

(i) in the case of a child (as so defined) of such an individual who has died, the first month in which such child meets the criteria specified in subparagraphs (A), (B), and (C), or

(ii) in the case of a child (as so defined) of an individual entitled to an old-age insurance benefit or to a disability insurance benefit, the first month throughout which such child is a child (as so defined) and meets the criteria specified in paragraph (B) and (C) (if in such month he meets the criterion specified in paragraph (A)),

whichever is earlier, and ending (*subject to subsections (a) (3), (g), and (h) of section 223*) with the month preceding whichever of the following first occurs—

(D) the month in which such child dies, or marries,

(E) the month in which such child attains the age of 18, but only if he (i) is not under a disability (as so defined) at the time he attains such age, and (ii) is not a full-time elementary or secondary school student during any part of such month.

(F) if such child was not under a disability (as so defined) at the time he attained the age of 18, the earlier of—

(i) the first month during no part of which he is a full-time elementary or secondary school student, or

(ii) the month in which he attains the age of 19, but only if he was not under a disability (as so defined) in such earlier month; or

(G) if such child was under a disability (as so defined) at the time he attained the age of 18, or if he was not under a disability (as so defined) at such time but was under a disability (as so defined) at or prior to the time he attained (or would attain) the age of 22, or, subject to section 223(e), the termination month (and for purposes of this subparagraph, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 222(c)(4)(A), the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 15 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month

(iii) the first month during no part of which he is a full-time elementary or secondary school student, or

(iv) the month in which he attains the age of 19, but only if he was not under a disability (as so defined) in such earlier month.

* * * * *

(6) A child whose entitlement to child's insurance benefits on the basis of the wages and self-employment income of an insured individual terminated with the month preceding the month in which such child attained the age of 18, or with a subsequent month, may again become entitled to such benefits (provided no event specified in paragraph (1)(D) has occurred) beginning with the first month thereafter in which he—

(A) (i) is a full-time elementary or secondary school student and has not attained the age of 19, or (ii) is under a disability (as defined in section 223(d)) and has not attained the age of 22, or

(B) is under a disability (as so defined) which began before the close of the 84th month following the month in which his most recent entitlement to child's insurance benefits terminated because he ceased to be under such disability,

but only if he has filed application for such reentitlement. Such reentitlement shall end (*subject to subsections (a) (3), (g), and (h) of section 223*) with the month preceding whichever of the following first occurs:

(C) the first month in which an event specified in paragraph (1) (D) occurs;

(D) the earlier of (i) the first month during no part of which he is a full-time elementary or secondary school student, or (ii) the month in which he attains the age of 19, but only if he is not under a disability (as so defined) in such earlier month; or

(E) if he was under a disability (as so defined), the third month following the month in which he ceases to be under such disability or (if later) the earlier of—

(i) the first month during no part of which he is a full-time elementary or secondary school student, or

(ii) the month in which he attains the age of 19.

* * * * *

Widow's Insurance Benefits

(e) (1) The widow (as defined in section 216(c)) and every surviving divorced wife (as defined in section 216(d)) of an individual who died a fully insured individual, if such widow or such surviving divorced wife—

(A) is not married,

(B) (i) has attained age 60, or (ii) has attained age 50 but has not attained age 60 and is under a disability (as defined in section 223(d)) which began before the end of the period specified in paragraph (5),

(C) (i) has filed application for widow's insurance benefits, or was entitled to wife's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which he died, and (I) has attained age 65 or (II) is not entitled to benefits under subsection (a) or section 223, or

(ii) was entitled, on the basis of such wages and self-employment income, to mother's insurance benefits for the month preceding the month in which she attained age 65, and

(D) is not entitled to old-age insurance benefits or is entitled to old-age insurance benefits each of which is less than the primary insurance amount of such deceased individual, shall be entitled to a widow's insurance benefit for each month, beginning with—

(E) if she satisfies subparagraph (B) by reason of clause (i) thereof, the first month in which she becomes so entitled to such insurance benefits, or

(F) if she satisfies subparagraph (B) by reason of clause (ii) thereof—

(i) the first month after her waiting period (as defined in paragraph (6)) in which she becomes so entitled to such insurance benefits, or

(ii) the first month during all of which she is under a disability and in which she becomes so entitled to such insurance

benefits, but only if she was previously entitled to insurance benefits under this subsection on the basis of being under a disability and such first month occurs (I) in the period specified in paragraph (5) and (II) after the month in which a previous entitlement to such benefits on such basis terminated,

and ending (*subject to subsections (a)(3), (g), and (h) of section 223*) with the month preceding the first month in which any of the following occur; she remarries, dies, becomes entitled to an old-age insurance benefit equal to or exceeding the primary insurance amount of such deceased individual, or, if she became entitled to such benefits before she attained age 60, subject to section 223(e), the termination month (unless she attains age 65 on or before the last day of such termination month). For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which her disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 222(c)(4)(A), the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 15 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity.

* * * * *

Widower's Insurance Benefits

(f)(1) The widower (as defined in section 216(g)) of an individual who died a fully insured individual, if such widower—

(A) has not remarried,

(B) (i) has attained age 60, or (ii) has attained age 50 but has not attained age 60 and is under a disability (as defined in section 223(d)) which began before the end of the period specified in paragraph (6),

(C) has filed application for widower's insurance benefits or was entitled to husband's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which she died, and (I) has attained age 65 or (II) is not entitled to benefits under subsection (a) or section 223,

(D) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than the primary insurance amount of his deceased wife,
shall be entitled to a widower's insurance benefit for each month, beginning with—

(E) if he satisfies subparagraph (B) by reason of clause (i) thereof, the first month in which he becomes so entitled to such insurance benefits, or

(F) if he satisfies subparagraph (B) by reason of clause (ii) thereof—

(i) the first month after his waiting period (as defined in paragraph (7)) in which he becomes so entitled to such insurance benefits, or

(ii) the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was previously entitled to insurance benefits under this subsection on the basis of being under a disability and such first month occurs (I) in the period specified in paragraph (6) and (II) after the month in which a previous entitlement to such benefits on such basis terminated, and ending (*subject to subsections (a) (3), (g), and (h) of section 223*) with the month preceding the first month in which any of the following occurs: he remarries, dies, or becomes entitled to an old-age insurance benefit equal to or exceeding the primary insurance amount of his deceased wife, or, if he became entitled to such benefits before he attained age 60, subject to section 223 (e), the termination month (unless he attains age 65 on or before the last day of such termination month). For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 222 (c) (4) (A), the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 15 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity.

* * * * *

APPLICATION FOR MONTHLY INSURANCE BENEFITS

(j) (1) * * *

[(2) An application for any monthly benefits under this section filed before the first month in which the applicant satisfies the requirements for such benefits shall be deemed a valid application (and shall be deemed to have been filed in such first month) only if the applicant satisfies the requirements for such benefits before the Secretary makes a final decision on the application and no request under section 205 (b) for notice and opportunity for a hearing thereon is made or, if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Secretary).]

(2) *An application for any monthly benefits under this section filed before the first month in which the applicant satisfies the requirements for such benefits shall be deemed a valid application (and shall be deemed to have been filed in such first month) only if the applicant*

satisfies the requirements for such benefits before the Secretary makes a final decision on the application and—

(A) no request under section 205(b) for notice and opportunity for a hearing thereon is made or, if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Secretary), and

(B) in the case of an applicant with respect to whom disability is required for such benefits under subsection (d)(1)(B)(ii), (e)(1)(B)(ii), or (f)(1)(B)(ii), no request for reconsideration under section 221(d) is made, or if such a request is made, subject to section 221(d)(5), before a decision on reconsideration is made under section 221(d).

REDUCTION OF BENEFIT AMOUNTS FOR CERTAIN BENEFICIARIES

—(q)(1) ***

(7) For purposes of this subsection the “adjusted reduction period” for an individual’s old-age, wife’s, husband’s, widow’s, or widower’s insurance benefit is the reduction period prescribed in paragraph (6)(A) for such benefit, and the “additional adjusted reduction period” for an individual’s, widow’s, or widower’s, insurance benefit is the additional reduction period prescribed by paragraph (6)(B) for such benefit, excluding from each such period—

(A) any month in which such benefit was subject to deductions under section 203(b), 203(c)(1), 203(d)(1), or 222(b),

(B) in the case of wife’s insurance benefits, any month in which she had in her care (individually or jointly with the person on whose wages and self-employment income such benefit is based) a child of such person entitled to child’s insurance benefits,

(C) in the case of wife’s or husband’s insurance benefits, any month for which such individual was not entitled to such benefits because of the occurrence of an event that terminated her or his entitlement to such benefits,

(D) in the case of widow’s insurance benefits, any month in which the reduction in the amount of such benefit was determined under paragraph (5)(D),

(E) in the case of widow’s or widower’s insurance benefits, any month before the month in which she or he attained age 62, and also for any later month before the month in which he attained retirement age, for which she or he was not entitled to such benefit because of the occurrence of an event that terminated her or his entitlement to such benefits, and

[(F) in the case of old-age insurance benefits, any month for which such individual was entitled to a disability insurance benefit.]

(F) in the case of old-age insurance benefits, any month for which such individual (i) received a disability insurance benefit, or (ii) (I) would have received a disability insurance benefit but for the application of section 223(f) or section 224 and (II) did not receive an old-age insurance benefit.

* * * * *

EVIDENCE, PROCEDURE, AND CERTIFICATION FOR PAYMENT

SEC. 205. (a) The Secretary shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder. *The Secretary shall assure that uniform standards are applied at all levels of adjudication in making determinations of whether individuals are under disabilities as defined in section 216(i) or 223(d).*

[(b) The Secretary is directed to make findings of fact, and decisions as to the rights of any individual applying for a payment under this title. Any such decision by the Secretary which involves a determination of disability and which is in whole or in part unfavorable to such individual shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the Secretary's determination and the reason or reasons upon which it is based. Upon request by any such individual or upon request by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, husband, widower, child, or parent who makes a showing in writing that his or her rights may be prejudiced by any decision the Secretary has rendered, he shall give such applicant and such other individual reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse his findings of fact and such decision. Any such request with respect to such a decision must be filed within sixty days after notice of such decision is received by the individual making such request. The Secretary is further authorized, on his own motion, to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this title. In the course of any hearing, investigation, or other proceeding, he may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Secretary even though inadmissible under rules of evidence applicable to court procedure.]

(b) (1) *The Secretary is directed to make findings of fact and decisions as to the rights of any individual applying for a payment under this title.*

(2) (A) *The Secretary may provide for reconsideration of such decisions (other than decisions to which subparagraph (B) applies) and shall provide for hearings in accordance with paragraph (3).*

(B) *If the determinations required in the course of making any such decision include a determination relating to disability or to a period of disability and such decision is in whole or in part unfavorable to an individual applying for a payment under this title, the Secretary shall provide for reconsideration of such decision and for hearings in accordance with section 221.*

(3) *Upon request by any individual applying for a payment under this title or upon request by a wife, divorced wife, widow, surviving*

divorced wife, surviving divorced mother, husband, widower, child, or parent who makes a showing in writing that his or her rights may be prejudiced by any decision the Secretary has rendered (other than a decision to which paragraph (2) (B) applies), he shall give such applicant and such other individual reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse his findings of fact and such decision. Any such request with respect to any such determination must be filed within sixty days after notice of the decision is received by the individual making such request.

(4) The Secretary is further authorized, on his own motion, to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this section, section 221, and the other provisions of this title.

(5) In the course of any hearing, investigation, or other proceeding referred to in paragraph (4), the Secretary may administer oaths and affirmations, examine witnesses, and receive evidence.

(6) Evidence may be received at any hearing referred to in paragraph (4), subject to section 221(d) (5), even though inadmissible under rules of evidence applicable to court procedure.

(7) Subject to the specific provisions and requirements of this Act—

(A) any hearing held pursuant to this subsection or section 221(e) shall be conducted on the record and shall be subject to sections 554 through 557 of title 5, United States Code, and any decision made by the Secretary after such a hearing shall constitute an "adjudication" within the meaning of section 551(7) of such title; and

(B) the Secretary, in accordance with section 3105 of title 5, United States Code, shall appoint administrative law judges who, in any case in which authority to conduct hearings under this subsection or section 221(e) is delegated by the Secretary, shall conduct such hearings, issue decisions after such hearings, and perform such other functions and duties described in sections 554 and 557 of such title as are applicable to such hearings.

* * * * *

Prohibition Against Interim Payments

(r) No amount shall be paid to any individual applying for benefits under this title until a final determination of his or her entitlement to such benefits has been made.

* * * * *

OTHER DEFINITIONS

SEC. 216. For the purposes of this title—

* * * * *

Disability; Period of Disability

(i) (1) Except for purposes of section 202(d), 202(e), 202(f), 223, and 225, the term "disability" means (A) inability to engage in any physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period

of not less than 12 months, or (B) blindness; and the term "blindness" means central visual acuity of 20/200 or less in the better eye with the use of correcting lens. An eye which is accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less. The provisions of paragraphs (2) (A), (3), (4), (5), and (6) of section 223(d) shall be applied for purposes of determining whether an individual is under a disability within the meaning of the first sentence of this paragraph in the same manner as they are applied for purposes of paragraph (1) of such section. Nothing in this title shall be construed as authorizing the Secretary or any other officer or employee of the United States to interfere in any way with the practice of medicine or with relationships between practitioners of medicine and their patients, or to exercise any supervision or control over the administration or operation of any hospital.

(2) (A) The term "period of disability" means a continuous period (beginning and ending as hereinafter provided in this subsection) during which an individual was under a disability (as defined in paragraph (1)), but only if such period is of not less than five full calendar months' duration or such individual was entitled to benefits under section 223 for one or more months in such period.

(B) No period of disability shall begin as to any individual unless such individual files an application for a disability determination with respect to such period; and no such period shall begin as to any individual after such individual attains the age of 65.

In the case of a deceased individual, the requirement of an application under the preceding sentence may be satisfied by an application for a disability determination filed with respect to such individual within 3 months after the month in which he died.

(C) A period of disability shall begin—

(i) on the day the disability began, but only if the individual satisfies the requirements of paragraph (3) on such day; or

(ii) if such individual does not satisfy the requirements of paragraph (3) on such day, then on the first day of the first quarter thereafter in which he satisfies such requirements.

(D) A period of disability shall (*subject to subparagraph (H)*) end with the close of whichever of the following months is the earlier:

(i) the month preceding the month in which the individual attains age 65, or (ii) the month preceding (I) the termination month (as defined in section 223(a)(1)), or, if earlier (II) the first month for which no benefit is payable by reason of section 223(e), where no benefit is payable for any of the succeeding months during the 15-month period referred to in such section.

(E) Except as is otherwise provided in subparagraph (F), no application for a disability determination which is filed more than 12 months after the month prescribed by subparagraph (D) as the month in which the period of disability ends (determined without regard to subparagraph (B) and this subparagraph) shall be accepted as an application for purposes of this paragraph.

(F) An application for a disability determination which is filed more than 12 months after the month prescribed by subparagraph (D)

as the month in which the period of disability ends (determined without regard to subparagraphs (B) and (E)) shall be accepted as an application for purposes of this paragraph if—

(i) in the case of an application filed by or on behalf of an individual with respect to a disability which ends after the month in which the Social Security Amendments of 1967 is enacted, such application is filed not more than 36 months after the month in which such disability ended, such individual is alive at the time the application is filed, and the Secretary finds in accordance with regulations prescribed by him that the failure of such individual to file an application for a disability determination within the time specified in subparagraph (E) was attributable to a physical or mental condition of such individual which rendered him incapable of executing such an application, and

(ii) in the case of an application filed by or on behalf of an individual with respect to a period of disability which ends in or before the month in which the Social Security Amendments of 1967 as enacted,

(I) such application is filed not more than 12 months after the month in which the Social Security Amendments of 1967 is enacted,

(II) a previous application for a disability determination has been filed by or on behalf of such individual (1) in or before the month in which the Social Security Amendments of 1967 is enacted, and (2) not more than 36 months after the month in which his disability ended, and

(III) the Secretary finds in accordance with regulations prescribed by him, that the failure of such individual to file an application within the then specified time period was attributable to a physical or mental condition of such individual which rendered him incapable of executing such an application.

In making a determination under this subsection, with respect to the disability or period of disability of any individual whose application for a determination thereof is accepted solely by reason of the provisions of this subparagraph (F), the provisions of this subsection (other than the provisions of this subparagraph) shall be applied as such provisions are in effect at the time determination is made.

(G) An application for a disability determination filed before the first day on which the applicant satisfies the requirements for a period of disability under this subsection shall be deemed a valid application (and shall be deemed to have been filed on such first day) only if the applicant satisfies the requirements for a period of disability before the Secretary makes a final decision on the application [and no request under section 205(b) for notice and opportunity for a hearing thereon is made or, if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Secretary)] *and no request for reconsideration under section 221(d) is made, or if such a request is made, subject to section 221(d)(5), before a decision on reconsideration is made under section 221(d).*

(H) The provisions of subsections (a) (3), (g), and (h) of section 223 shall apply with respect to the duration of an individual's period of disability under this subsection in the same way that they apply with respect to the duration of the period for which an individual's disability insurance benefits are payable under such section 223.

* * * * *

DISABILITY DETERMINATIONS, APPEALS, AND REVIEW

SEC. 221.

(a) (1) In the case of any individual, the determination of whether or not he is under a disability (as defined in section 216(i) or 223(d)) and of the day such disability began, and the determination of the day on which such disability ceases, shall be made by a State agency, notwithstanding any other provision of law, in any State that notifies the Secretary in writing that it wishes to make such disability determinations commencing with such month as the Secretary and the State agree upon, but only if (A) the Secretary has not found, under subsection (b) (1), that the State agency has substantially failed to make disability determinations in accordance with the applicable provisions of this section or rules issued thereunder, and (B) the State has not notified the Secretary, under subsection (b) (2), that it does not wish to make such determinations. If the Secretary once make the finding described in clause (A) of the preceding sentence, or the State gives the notice referred to in clause (B) of such sentence, the Secretary may thereafter determine whether (and, if so, beginning with which month and under what conditions) the State may again make disability determinations under this paragraph.

(2) The disability determinations described in paragraph (1) made by a State agency shall be made in accordance with the pertinent provisions of this title and the standards and criteria contained in regulations or other written guidelines of the Secretary pertaining to matters such as disability determinations, the class or classes of individuals with respect to which a State may make disability determinations (if it does not wish to do so with respect to all individuals in the State), and the conditions under which it may choose not to make all such determinations. In addition, the Secretary shall promulgate regulations specifying, in such detail as he deems appropriate, performance standards and administrative requirements and procedures to be followed in performing the disability determination function in order to assure effective and uniform administration of the disability insurance program throughout the United States. The regulations may, for example, specify matters such as—

(A) the administrative structure and the relationship between various units of the State agency responsible for disability determinations,

(B) the physical location of and relationship among agency staff units, and other individuals or organizations performing tasks for the State agency, and standards for the availability to applicants and beneficiaries of facilities for making disability determinations,

(C) State agency performance criteria, including the rate of accuracy of decisions, the time periods within which determinations must be made, the procedures for and the scope of review by the Secretary, and, as he finds appropriate, by the State, of its performance in individual cases and in classes of cases, and rules governing access of appropriate Federal officials to State offices and to State records relating to its administration of the disability determination function,

(D) fiscal control procedures that the State agency may be required to adopt, and

(E) the submission of reports and other data, in such form and at such time as the Secretary may require, concerning the State agency's activities relating to the disability determination.

Nothing in this section shall be construed to authorize the Secretary to take any action except pursuant to law or to regulations promulgated pursuant to law.

(b) (1) If the Secretary finds, after notice and opportunity for a hearing, that a State agency is substantially failing to make disability determinations *under subsection (a) (1) or subsection (d)* in a manner consistent with his regulations and other written guidelines, the Secretary shall, not earlier than 180 days following his finding, and after he has complied with the requirements of paragraph (3), make the disability determinations referred to in subsection (a) (1) *or the disability determinations referred to in subsection (d) (2) (as the case may be)*.

(2) If a State, having notified the Secretary of its intent to make disability determinations *under subsection (a) (1) or under subsection (d) (2) (as the case may be)*, no longer wishes to make such determinations, it shall notify the Secretary in writing of that fact, and, if an agency of the State is making disability determinations at the time such notice is given, it shall continue to do so for not less than 180 days, or (if later) until the Secretary has complied with the requirements of paragraph (3). Thereafter, the Secretary shall make the disability determinations referred to in subsection (a) (1) *or the disability determinations referred to in subsection (d) (2) (as the case may be)*.

(3) (A) The Secretary shall develop and initiate all appropriate procedures to implement a plan with respect to any partial or complete assumption by the Secretary of the disability determination function *under subsection (a) or subsection (d)* from a State agency, as provided in this section, under which employees of the affected State agency who are capable of performing duties in the disability determination process *under subsection (a) or subsection (d) (as the case may be)* for the Secretary shall, notwithstanding any other provision of law, have a preference over any other individual in filing an appropriate employment position with the Secretary (subject to any system established by the Secretary for determining hiring priority among such employees of the State agency) unless any such employee is the administrator, the deputy administrator, assistant administrator (or his equivalent) of the State agency, in which case the Secretary may accord such priority to such employee.

(B) The Secretary shall not make such assumption of the disability determination function *under subsection (a) or subsection (d)* until such time as the Secretary of Labor determines that, with respect to employees of such State agency who will be displaced from their employment on account of such assumption by the Secretary and who will not be hired by the Secretary to perform duties in the disability determination process *under subsection (a) or subsection (d) (as the case may be)*, the State has made fair and equitable arrangements to protect the interests of employees so displaced. Such protective arrangements shall include only those provisions which are provided under all applicable Federal, State and local statutes including, but not limited to, (i) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective-bargaining agreements; (ii) the continuation of collective-bargaining rights; (iii) the assignment of affected employees to other jobs or to retraining programs; (iv) the protection of individual employees against a worsening of their positions with respect to their employment; (v) the protection of health benefits and other fringe benefits; and (vi) the provision of severance pay, as may be necessary.

(c) (1) The Secretary may on his own motion [or as required under paragraphs (2) and (3)]* review a determination, made by a State agency under this section, that an individual is or is not under a disability (as defined in section 216(i) or 223(d)) and, as a result of such review, may modify such agency's determination and determine that such individual either is or is not under a disability (as so defined) or that such individual's disability began on a day earlier or later than that determined by such agency, or that such disability ceased on a day earlier or later than that determined by such agency. A review by the Secretary on his own motion of a State agency determination under this paragraph may be made before or after any action is taken to implement such determination.

[(2) The Secretary (in accordance with paragraph (3)) shall review determinations, made by State agencies pursuant to this section, that individuals are under disabilities (as defined in section 216(i) or 223(d)). Any review by the Secretary of a State agency determination under this paragraph shall be made before any action is taken to implement such determination.

[(3) In carrying out the provisions of paragraph (2) with respect to the review of determinations, made by State agencies pursuant to

*The amendment indicated to section 221(c)(1) of the Social Security Act would be effective October 1, 1987.

Effective October 1, 1982, through September 30, 1987, section 221(c)(1) of the Social Security Act would read as follows:

(c) (1) The Secretary may on his own motion or as required under [paragraphs (2) and (3)] *paragraph (2)* review a determination, made by a State agency under this section, that an individual is or is not under a disability (as defined in section 216(i) or 223(d)) and, as a result of such review, may modify such agency's determination and determine that such individual either is or is not under a disability (as so defined) or that such individual's disability began on a day earlier or later than that determined by such agency, or that such disability ceased on a day earlier or later than that determined by such agency. A review by the Secretary on his own motion of a State agency determination under this paragraph may be made before or after any action is taken to implement such determination.

this section, that individuals are under disabilities (as defined in section 216(i) or 223(d)), the Secretary shall review—

[(A) at least 15 percent of all such determinations made by State agencies in the fiscal year 1981,

[(B) at least 35 percent of all such determinations made by State agencies in the fiscal year 1982, and

[(C) at least 65 percent of all such determinations made by State agencies in any fiscal year after the fiscal year 1982.]

(2) *The Secretary shall review at least 10 percent of all determinations, made by State agencies under this section in any fiscal year after the fiscal year 1982 and before the fiscal year 1988, that individuals are or are not under disabilities (as defined in section 216(i) or 223(d)), with at least one-sixth of all of the determinations so reviewed being determinations that the individuals involved are not under disabilities (as so defined). Any review by the Secretary of a State agency determination under this paragraph shall be made before any action is taken to implement such determination.*

(d)(1) *Any initial decision the Secretary renders with respect to an individual's rights for a payment under this title (including a decision the Secretary renders by reason of a review under subsection (c)) in the course of which a determination relating to disability or to a period of disability is required for such payment and which is in whole or in part unfavorable to such individual shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, the Secretary's decision, and the reason or reasons upon which the decision is based. Upon request by any such individual, or by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, husband, widower, child, or parent, who makes a showing in writing that his or her rights may be prejudiced by such a decision, he or she shall be entitled to reconsideration of such decision under this subsection. Any such request with respect to any such decision must be filed within 180 days after notice of the decision is received by the individual making such request.*

(2)(A) *If a reconsideration is requested by an individual under paragraph (1) and a showing is made by such individual that he or she may be prejudiced in such decision by a determination relating to disability or to a period of disability, such individual shall be entitled in the course of such reconsideration to a determination relating to such disability or period of disability.*

(B)(i) *In the case of a reconsideration to be made by the Secretary of a decision to terminate benefits in which a determination relating to disability or to a period of disability was made by a State agency, any determination under subparagraph (A) relating to disability or to a period of disability shall be made by the State agency, notwithstanding any other provision of law, in any State that notifies the Secretary in writing that it wishes to make determinations under this subparagraph commencing with such month as the Secretary and the State agree upon, but only if (1) the Secretary has not found, under*

subsection (b) (1), that the State agency has substantially failed to make determinations under this subparagraph in accordance with the applicable provisions of this section or rules issued thereunder, and (II) the State has not notified the Secretary under subsection (b) (2), that it does not wish to make determinations under this subparagraph. If the Secretary once makes the finding described in clause (I) of the preceding sentence, or the State gives the notice referred to in clause (II) of such sentence, the Secretary may thereafter determine whether (and, if so, beginning with which month and under what conditions) the State may again make determinations under this subparagraph.

(ii) Any determination made by a State agency under clause (i) shall be made in the manner prescribed for determinations under subsection (a) (2) and regulations prescribed thereunder; except that it shall be made after opportunity for an evidentiary hearing which is reasonably accessible to the claimant, and which is held by an adjudicatory unit of the State agency other than the unit that made the determination (relating to the claimant's disability or period of disability) on which the decision being reconsidered was based.

(3) A decision by the Secretary on reconsideration under this subsection in the course of which a determination relating to disability or to a period of disability is required and which is in whole or in part unfavorable to the individual requesting the reconsideration shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, the Secretary's decision, and the reason or reasons upon which the decision is based.

(4) The Secretary shall prescribe by regulation procedures for the reconsideration under this subsection of issues other than issues relating to disability or a period of disability.

(5) No documentary evidence which is submitted on or after the date of a decision on reconsideration under this subsection relating to entitlement to benefits for periods preceding the date of such decision (hereafter in this section referred to as the "relevant periods"), where such decision was made after opportunity for an evidentiary hearing pursuant to paragraph (2) (B) (ii) or subsection (i) and where such evidence could have been available before the date of that decision, shall be admitted or considered in connection with entitlement to such benefits for such periods, except as provided in subsection (e) (3). Nothing in the preceding sentence, subsection (e) (3), or section 202 (j) (2), 216 (i) (2) (G), or 223 (b) shall be construed to permit, prohibit, or otherwise affect the admission or consideration, at or in connection with any proceeding in which a reconsideration decision relating to an individual's entitlement to benefits for particular relevant periods is involved, of evidence relating to such individual's entitlement to benefits for any other period.

(6) Each individual who requests a reconsideration under paragraph (1) shall be informed, orally and in writing, before the reconsideration, of the preceding provisions of this subsection, and shall be advised that the individual may wish to retain an attorney or other representative to assist him during the reconsideration.

(e) (1) Upon request by any individual described in subsection (d) (1) who makes a showing in writing that his or her rights may be prejudiced by a decision on reconsideration under this section, the Sec-

retary shall give such individual and the other individuals described in subsection (d) (1) reasonable notice and opportunity for a hearing. Any such request with respect to such a decision must be filed within sixty days after notice of such decision is received by the individual making such request.

(2) If a hearing under paragraph (1) is held, the Secretary shall, on the basis of the evidence considered in reaching the reconsideration decision and the testimony given at the hearing, and in accordance with the relevant provisions of this title, regulations of the Secretary, and any written guidelines which the Secretary may prescribe in carrying out the last sentence of section 205 (a), render a decision on entitlement to benefits for the relevant periods, including in such decision a statement of the findings of fact, conclusions, and the reasons or bases therefor. The hearing decision may affirm, modify, or reverse the Secretary's findings of fact and the decision on reconsideration.

(3) (A) In any case in which the individual making the request under paragraph (1) or any other individual described in subsection (d) (1) submits to the Secretary, on or after the date of the decision on reconsideration under subsection (d) and before the commencement of a hearing under this subsection, additional documentary evidence relating to disability or to a period of disability affecting entitlement to benefits for the relevant periods which is otherwise prevented by subsection (d) (5) from being admitted or considered in connection with such entitlement, and the individual does not make the election under subparagraph (B)—

(i) if the determinations made in the course of such decision on reconsideration include a determination relating to disability or to a period of disability which was made by a State agency under subsection (d) (2) (B), such additional evidence, together with the evidence considered in reaching the reconsideration decision, shall be remanded to the State agency, or

(ii) if such determination relating to disability or to a period of disability was made by the Secretary in accordance with subsection (i), such additional evidence, together with the evidence considered in reaching the reconsideration decision, shall be reviewed by the Secretary.

(B) An individual who submits additional evidence as described in subparagraph (A) may nevertheless elect that no remand or review occur under subparagraph (A) with respect to such evidence and that such additional evidence be disregarded for purposes of determining entitlement under this subsection. The Secretary shall notify such individual upon submitting such evidence of the provisions of this paragraph and of the election available under this subparagraph and provide such individual with a reasonable period of time within which to make such election before remanding or reviewing such evidence under subparagraph (A).

(C) The State agency, on remand, or the Secretary, on review, shall consider the record, as supplemented by such additional evidence, in connection with benefits for the relevant periods and shall affirm, modify, or reverse the determination on reconsideration relating to disability or to a period of disability. The Secretary shall inform such applicant or other individual of the decision on further reconsideration

based on determinations made on such remand or in such review and of the right to request a hearing thereon under this subsection.

(4) The Secretary shall prescribe by regulation a period of time after hearing decisions under this section during which the Secretary, on his own motion or on the request of the individual requesting the hearing, may undertake a review of such decision. If such decision is not so reviewed, such decision shall be considered the final decision of the Secretary at the end of such period. If such decision is so reviewed, at the end of any such review the Secretary shall affirm, modify, or reverse the decision and such decision as so affirmed, modified, or reversed shall be considered the final decision of the Secretary. Any such review shall be governed by the requirements of this subsection.

[(d)] *(f) (1) Any individual dissatisfied with any determination under [subsection (a), (b), (c), or (g)] subsection (b) shall be entitled to a hearing thereon by the Secretary to the same extent as is provided in section 205(b) with respect to decisions of the Secretary, and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).*

(2) Any individual who requests a hearing under subsection (e) and who is dissatisfied with the Secretary's final decision after such hearing shall be entitled to judicial review of such decision as is provided in section 205(g).

[(e)] *(g) Each State which is making disability determinations under subsection (a) (1) [under this section] or subsection (d) (2) shall be entitled to receive from the Trust Funds, in advance or by way of reimbursement, as determined by the Secretary, the cost to the State of making disability determinations under subsection (a) (1) or under subsection (d) (2), as the case may be. The Secretary shall from time to time certify such amount as is necessary for this purpose to the Managing Trustee, reduced or increased, as the case may be, by any sum (for which adjustment hereunder has not previously been made) by which the amount certified for any prior period was greater or less than the amount which should have been paid to the State under this subsection for such period: and the Managing Trustee, prior to audit or settlement by the General Accounting Office, shall make payment from the Trust Funds at the time or times fixed by the Secretary, in accordance with such certification. Appropriate adjustments between the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund with respect to the payments made under this subsection shall be made in accordance with paragraph (1) of subsection (g) of section 201 (but taking into account any refunds under subsection [(f)] (h) of this section) to insure that the Federal Disability Trust Fund is charged with all expenses incurred which are attributable to the administration of section 223 and the Federal Old-Age and Survivors Insurance Trust Fund is charged with all other expenses.*

[(f)] *(h) All money paid to a State under this section shall be used solely for the purposes for which it is paid; and any money so paid which is not used for such purposes shall be returned to the Treasury of the United States for deposit in the Trust Funds.*

[(g)](i) In the case of individuals in a State which does not undertake to perform disability determinations under subsection (a) (1) or subsection (d) (2), or which has been found by the Secretary to have substantially failed to make disability determinations *under subsection (a) (1) or subsection (d) (2) in a manner consistent with his regulations and guidelines, in the case of disability determinations under subsection (d) (2) to which subparagraph (B) thereof does not apply*, in the case of individuals outside the United States, and in the case of any class or classes of individuals for whom no State undertakes to make disability determinations *under subsection (a) or subsection (d)*, the determinations referred to in subsection (a) *or the determinations referred to in subsection (d) (as the case may be)* shall be made by the Secretary in accordance with regulations prescribed by him. *In the case of a reconsideration by the Secretary of a decision to terminate benefits, any disability determination made by the Secretary under this subsection in the course of such reconsideration shall be made after opportunity for an evidentiary hearing which is reasonably accessible to the claimant (and which is not held by the same person or persons who made the determination, relating to the claimant's disability or period of disability, on which the decision being reconsidered was based).*

[(i)](j) In any case where an individual is or has been determined to be under a disability, the case shall be reviewed by the applicable State agency or the Secretary (as may be appropriate), for purposes of continuing eligibility, at least once every 3 years; except that where a finding has been made that such disability is permanent, such reviews shall be made at such times as the Secretary determines to be appropriate. Reviews of cases under the preceding sentence shall be in addition to, and shall not be considered as a substitute for, any other reviews which are required or provided for under or in the administration of this title. *An individual who makes a showing in writing that his or her rights may be prejudiced by a determination under this subsection with respect to continuing eligibility shall be entitled to a reconsideration and a hearing to the same extent and in the same manner as provided under subsection (d) and (e).*

* * * * *

REHABILITATION SERVICES

Referral for Rehabilitation Services

SEC. 222. (a) It is hereby declared to be the policy of the Congress that disabled individuals applying for a determination of disability, [and] disabled individuals who are entitled to child's insurance benefits, widow's insurance benefits, or widower's insurance benefits, *and individuals whose entitlement to such benefits is terminated by reason of recovery from the disabling physical or mental impairment on which their disability was based or by reason of a finding that such impairment has not existed (or is no longer disabling)* shall be promptly referred to the State agency or agencies administering or supervising the administration of the State plan approved under the

Vocational Rehabilitation Act, or to other appropriate public or private agencies, organizations, institutions, or individuals, for necessary vocational rehabilitation services, to the end that the maximum number of such individuals may be rehabilitated into productive activity.

* * * * *

Period of Trial Work

(c) (1) The term "period of trial work", with respect to an individual entitled to benefits under section 223, 202(d), 202(e), or 202(f), means a period of months beginning and ending as provided in paragraphs (3) and (4).

(2) For purposes of sections 216(i) and 223, any services rendered by an individual during a period of trial work shall be deemed not to have been rendered by such individual in determining whether his disability has ceased in a month during such period. **[For purposes of this subsection the term "services" means activity which is performed for remuneration or gain or is determined by the Secretary to be of a type normally performed for remuneration or gain.]** *For purposes of this subsection the term "services" means activity which is determined by the Secretary to be of a type normally performed for remuneration or gain, and which is performed (by the particular individual involved) in any month for remuneration or gain at least equal to (A) the amount of remuneration or gain which was sufficient, under the regulations of the Secretary then in effect, to cause the activity to be treated as constituting "services" for such purposes in the month in which the Disability Amendments of 1982 were enacted, or (B) if one or more increases in exempt amounts under section 203(f)(8) have occurred pursuant to subparagraph (B) thereof during the period beginning with the month after the month specified in clause (A) of this sentence and ending with the month in which the particular activity involved is performed, the amount to which the amount specified in clause (A) of this sentence would have increased under such section 203(f)(8) during such period if in the month specified in clause (A) it had been an exempt amount applicable to individuals other than those described in subparagraph (D) of such section 203(f)(8).*

[Costs of Rehabilitation Services From Trust Funds

[(d) (1) For purposes of making vocational rehabilitation services more readily available to disabled individuals who are—

[(A) entitled to disability insurance benefits under section 223,

[(B) entitled to child's insurance benefits under section 202(d) after having attained age 18 (and are under a disability),

[(C) entitled to widow's insurance benefits under section 202(e) prior to attaining age 60, or

[(D) entitled to widower's insurance benefits under section 202(f) prior to attaining age 60,

to the end that savings will accrue to the Trust Funds as a result of rehabilitating such individuals into substantial gainful activity, there are authorized to be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance

Trust Fund each fiscal year such sums as may be necessary to enable the Secretary to reimburse the State for the reasonable and necessary costs of vocational rehabilitation services furnished such individuals (including services during their waiting periods), under a State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), which result in their performance of substantial gainful activity which lasts for a continuous period of nine months. The determination that the vocational rehabilitation services contributed to the successful return of such individuals to substantial gainful activity and the determination of the amount of costs to be reimbursed under this subsection shall be made by the Commissioner of Social Security in accordance with criteria formulated by him.

[(2) In the case of any State which is unwilling to participate or does not have a plan which meets the requirements of paragraph (1), the Commissioner of Social Security may provide such services in such State by agreement or contract with other public or private agencies, organizations, institutions, or individuals. The provision of such services shall be subject to the same conditions as otherwise apply under paragraph (1).

[(3) Payments under this subsection shall be made in advance or by way of reimbursement, with necessary adjustments for overpayments and underpayments.]

Payment of Costs of Rehabilitation Services From Trust Funds

(d) (1) (A) *For purposes of making vocational rehabilitation services more readily available to disabled individuals who are—*

(i) *entitled to disability insurance benefits under section 223.*

(ii) *entitled to child's insurance benefits under section 202(d) after having attained age 18 (and are under a disability),*

(iii) *entitled to widow's insurance benefits under section 202(e) before attaining age 60, or*

(iv) *entitled to widower's insurance benefits under section 202(f) before attaining age 60,*

to the end that savings will accrue to the Trust Fund as a result of rehabilitating such individuals into substantial gainful activity, there are authorized to be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund each fiscal year such sums as may be necessary to enable the Secretary to pay the State (under a State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.)), or another public or private agency, organization, institution, or individual (under an agreement or contract entered into under subparagraph (D) of this paragraph), the reasonable and necessary costs of vocational rehabilitation services furnished such individuals (including services during their waiting periods) which meet the requirements of subparagraph (B). The determination that the vocational rehabilitation services meet the requirements of subparagraph (B) and the determination of the amount of costs to be paid under this paragraph shall be made by the Commissioner of Social Security in accordance with criteria formulated by him.

(B) Vocational rehabilitation services furnished a disabled individual described in subparagraph (A) meet the requirements of this subparagraph—

(i) to the extent such services consist of evaluation services as determined by the Commissioner of Social Security,

(ii) if such services result in—

(I) his performance of substantial gainful activity which lasts for a continuous period of nine months, or

(II) his recovery from his disabling physical or mental impairment, or

(iii) if such individual refuses without good cause to continue to accept vocational rehabilitation services or fails to cooperate in such a manner as to preclude such individual's successful rehabilitation.

(C) Payments under this paragraph shall be made in advance (or, at the election of the recipient, by way of reimbursement), with necessary adjustments for overpayments and underpayments.

(D) The Commissioner of Social Security may provide vocational rehabilitation services in States under regulations prescribed by the Secretary or by agreement, or contract, with other public or private agencies, organizations, institutions, or individuals. There are authorized to be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund such sums as are necessary for the payment of the reasonable and necessary costs of such services. The provision of such services, and the payment of costs for such service, shall be subject to the same requirements as otherwise apply under the preceding provisions of this paragraph.

(E) The Commissioner of Social Security shall require each State and each public or private agency, organization, institution, or individual receiving payments under this paragraph to make such periodic reports to him concerning the operation of its program furnishing vocational rehabilitation services as are necessary to satisfy him that the amounts paid to such State, agency, organization, institution, or individual are used exclusively for furnishing such services in accordance with this paragraph.

(2)(A) For purposes of making vocational evaluation and job placement services more readily available to individuals who were disabled individuals described in paragraph (1)(A) but whose entitlement to the benefits described in paragraph (1)(A) was terminated by reason of recovery from the disabling physical or mental impairment on which their disability was based or by reason of a finding that such impairment has not existed, there shall be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund not to exceed \$15,000,000 for each of the fiscal years beginning on October 1, 1982, and October 1, 1983, respectively, to enable the Commissioner of the Rehabilitation Services Administration to pay to the State the costs of the reasonable and necessary costs of such services furnished such individuals by State agencies under a State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973. The amount paid to each State for each year shall not exceed the amount which bears the same ratio to the total amount paid to States for such year

under this paragraph as the ratio which the number of such entitlement terminations in such State in the preceding year bears to the total number of such entitlement terminations in the United States in such preceding year. Amounts remaining unpaid under this paragraph at the end of a fiscal year shall revert to the Trust Funds. The determination of the amount of costs to be paid under this paragraph shall be made by the Commissioner of the Rehabilitation Services Administration in accordance with criteria formulated by him.

(B) Payments under this paragraph shall be made in advance (or, at the election of the recipient, by way of reimbursement), with necessary adjustments for overpayments and underpayments.

(C) The Commissioner of the Rehabilitation Services Administration shall require each State agency receiving payments under this paragraph to make such periodic reports to him concerning the operation of its program furnishing vocational rehabilitation services as are necessary to satisfy him that amounts paid to such State, agency, organization, institution, or individual are used exclusively for furnishing such services in accordance with this paragraph.

[(4)] (3) Money paid from the Trust Funds under this subsection for the reimbursement of the costs of providing services to individuals who are entitled to benefits under section 223 (including services during their waiting periods), or who are entitled to benefits under section 202(d) on the basis of the wages and self-employment income of such individuals, shall be charged to the Federal Disability Insurance Trust Fund, and all other money paid from the Trust Funds under this subsection shall be charged to the Federal Old-Age and Survivors Insurance Trust Fund. The Secretary shall determine according to such methods and procedures as he may deem appropriate—

(A) the total amount to be reimbursed for the cost of services under this subsection, and

(B) subject to the provisions of the preceding sentence, the amount which should be charged to each of the Trust Funds.

[(5)] (4) For purposes of this subsection the term "vocational rehabilitation services" shall have the meaning assigned to it in title I of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), except that such services may be limited in type, scope, or amount in accordance with regulations of the Secretary designed to achieve the purpose of this section.

DISABILITY INSURANCE BENEFIT PAYMENTS

Disability Insurance Benefits

SEC. 223. (a) (1) Every individual who—

(A) is insured for disability insurance benefits (as determined under subsection (c) (1)),

(B) has not attained the age of sixty-five,

(C) has filed application for disability insurance benefits, and

(D) is under a disability (as defined in subsection (d))

shall be entitled to a disability insurance benefit (i) for each month beginning with the first month after his waiting period (as defined in subsection (c) (2)) in which he becomes so entitled to such insurance

benefits, or (ii) for each month beginning with the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was entitled to disability insurance benefits which terminated, or had a period of disability (as defined in section 216(i)) which ceased, within the sixty-month period preceding the first month in which he is under such disability, and ending (subject to paragraph (3) of this subsection and to subsections (g) and (h)) with the month preceding whichever of the following months is the earliest: the month in which he dies, the month in which he attains age 65, or, subject to subsection (e), the termination month. For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 222(c)(4)(A), the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 15 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity. No payment under this paragraph may be made to an individual who would not meet the definition of disability in subsection (d) except for paragraph (1)(B) thereof for any month in which he engages in substantial gainful activity, and no payment may be made for such month under subsection (b), (c), or (d) of section 202 to any person on the basis of the wages and self-employment income of such individual. In the case of a deceased individual, the requirement of subparagraph (C) may be satisfied by an application for benefits filed with respect to such individual within 3 months after the month in which he died.

* * * * *

(3) (A) *In any case where—*

(i) *an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability, and has been a recipient of such benefits for a period of not less than 36 consecutive months, and*

(ii) *the physical or mental impairment on the basis of which such benefits are payable is found to have ceased or not to have existed (or to be no longer disabling), and as a consequence such individual is determined, on or after the date of the enactment of this paragraph and before January 1, 1985, not to be entitled to such benefits,*

such individual shall be entitled (subject to subparagraph (B)) to have the payment of such benefits, and the payment of any other benefits under this Act based on such individual's wages and self-employment income, continued for an additional period of four months, beginning with the first month for which (under such determination) such benefits are no longer otherwise payable or (if later) with the

month in which he is initially notified in writing (by the applicable State agency or the Secretary) of such determination.

(B) No benefit shall be payable to any individual (or to any other person on the basis of such individual's wages and self-employment income) under subparagraph (A) for any month in the additional period referred to in such subparagraph if—

(i) such individual is determined by the Secretary to have engaged in substantial gainful activity in that month, or

(ii) such individual (or other person) is entitled or would upon application be entitled, for such month, to a monthly benefit of any other type under this title.

Filing of Application

(b) An application for disability insurance benefits filed before the first month in which the applicant satisfies the requirements for such benefits (as prescribed in subsection (a)(11)) shall be deemed a valid application (and shall be deemed to have been filed in such first month) only if the applicant satisfies the requirements for such benefits before the Secretary makes a final decision on the application [and no request under section 205(b) for notice and opportunity for a hearing thereon is made, or if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Secretary)] and no request under section 221(d) is made, or if such a request is made, subject to section 221(d)(5), before a decision on reconsideration is made under section 221(d). An individual who would have been entitled to a disability insurance benefit for any month had he filed application therefor before the end of such month shall be entitled to such benefit for such month if such application is filed before the end of the 12th month immediately succeeding such month.

* * * * *

Definition of Disability

(d)(1) The term "disability" means—

(A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or

(B) in the case of an individual who has attained the age of 55 and is blind (within the meaning of "blindness" as defined in section 216(i)(1)), inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

(2) For purposes of paragraph (1)(A)—

(A) an individual (except a widow, surviving divorced wife, or widower for purposes of section 202 (e) or (f)) shall be determined to be under a disability only if his physical or mental

impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

(B) A widow, surviving divorced wife, or widower shall not be determined to be under a disability (for purposes of section 202 (e) or (f)) unless his or her physical or mental impairment or impairments are of a level of severity which under regulations prescribed by the Secretary is deemed to be sufficient to preclude an individual from engaging in any gainful activity.

(3) For purposes of this subsection, a "physical or mental impairment" is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

(4) The Secretary shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. No individual who is blind shall be regarded as having demonstrated an ability to engage in substantial gainful activity on the basis of earnings that do not exceed the exempt amount under section 203(f)(8) which is applicable to individuals described in subparagraph (D) thereof; *and no other individual shall be regarded as having demonstrated an ability to engage in substantial gainful activity on the basis of earnings that do not exceed (i) the amount which was sufficient, under the regulations of the Secretary then in effect, to cause an individual to be treated as having demonstrated such an ability in the month in which the Disability Amendments of 1982 were enacted, or (ii) if one or more increases in exempt amounts under section 203(f)(8) have occurred pursuant to subparagraph (B) thereof during the period beginning with the month after the month specified in clause (i) and ending with the month in which the particular earnings involved are derived, the amount to which the amount specified in clause (i) would have increased under such section 203(f)(8) during such period if (in the month specified in clause (i)) it had been an exempt amount applicable to individuals other than those described in subparagraph (D) of such section 203(f)(8).* Notwithstanding the provisions of paragraph (2), an individual whose services or earnings meet such criteria shall, except for purposes of section 222(c), be found not to be disabled. In determining whether an individual is able to engage in substantial gainful activity by reason of his earnings, where his disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, there shall be excluded from such earnings an amount equal to the cost (to such individual) of any attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine

medical services unless such drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Secretary in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions, except that the amounts to be excluded shall be subject to such reasonable limits as the Secretary may prescribe.

(5) An individual shall not be considered to be under a disability unless he furnishes such medical and other evidence of the existence thereof as the Secretary may require. *An individual's statement as to pain or other symptoms shall not alone be conclusive evidence of disability as defined in this section; there must be medical signs and findings, established by medically acceptable clinical or laboratory diagnostic techniques, which show the existence of a medical condition that could reasonably be expected to produce the pain or other symptoms alleged and which, when considered with all evidence required to be furnished under this paragraph (including statements of the individual as to the intensity and persistence of such pain or other symptoms which may reasonably be accepted as consistent with the medical signs and findings), would lead to a conclusion that the individual is under a disability.* Any non-Federal hospital, clinic, laboratory, or other provider of medical services, or physician not in the employ of the Federal Government, which supplies medical evidence required and requested by the Secretary under this paragraph shall be entitled to payment from the Secretary for the reasonable cost of providing such evidence.

* * * * *

Continued Payment of Benefits During Appeal

(g) (1) *In any case where—*

(A) *an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,*

(B) *the physical or mental impairment on the basis of which such benefits are payable is found to have ceased or not to have existed (or to be no longer disabling), and as a consequence such individual is determined not to be entitled to such benefits, and*

(C) *a timely request for reconsideration of the determination that he is not so entitled is made under section 221 (d) (1), such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits, and the payment of any other benefits under this Act based on such individual's wages and self-employment income, continued for an additional period beginning with the first month for which (under such determination) such benefits are no longer otherwise payable and ending with the month preceding the month in which a decision is made upon such reconsideration or (if earlier) with the sixth month after the month in which he was initially notified in writing (by the applicable State agency or the Secretary) of such determination.*

(2) *Subject to subsection (h), if an individual elects to have the payment of his benefits continued for an additional period under para-*

graph (1) pending reconsideration, and the decision upon such reconsideration affirms the determination that he is not entitled to such benefits, any benefits paid under this title pursuant of such election (for months in such additional period) shall be considered overpayments for all the purposes of this title.

(3) If any month in the additional period during which benefits are payable to an individual pursuant to an election under paragraph (1) is a month for which an adjustment benefit (of the type involved) is also payable to such individual under subsection (a) (3), the benefit which is paid to him under this title for such month shall be deemed to be an adjustment benefit under such subsection (a) (3) rather than a benefit payable pursuant to such election under paragraph (1).

Benefit Payments Not To Be Treated as Overpayments in Certain Cases

(h) Notwithstanding any other provisions of this title, in any case where—

(v) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability, and

(2) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased or not to have existed (or to be no longer disabling), and as a consequence such individual is determined, on or after the date of the enactment of this subsection and before January 1, 1985, not to be entitled to such benefits,

no such benefit which was paid to such individual for any month prior to the month in which he is initially notified in writing (by the applicable State agency or the Secretary) of such determination, and no benefit which was paid under this Act to any other person for any such month on the basis of such individual's wages and self-employment income, shall be considered an overpayment for any of the purposes of this title.

REDUCTION OF BENEFITS BASED ON DISABILITY

SEC. 224. (a) If for any month prior to the month in which an individual attains the age of 65—

(1) such individual is entitled to benefits under section 223, and

[(2) such individual is entitled for such month to periodic benefits on account of such individual's total or partial disability (whether or not permanent) under—

[(A) a workmen's compensation law or plan of the United States or a State, or

[(B) any other law or plan of the United States, a State, a political subdivision (as that term is used in section 218(b)

(2)), or an instrumentality of two or more States (as that term is used in section 218(k))],

[other than benefits payable under title 38, United States Code, benefits payable under a program of assistance which is based on need, benefits based on service all, or substantially all, of which

was included under an agreement entered into by a State and the Secretary under section 218, and benefits under a law or plan of the United States based on service all or part of which is employment as defined in section 210,】

(2) *such individual is entitled for such month on account of his total or partial disability (whether or not permanent)—*

(A) *to periodic benefits under a workmen's compensation law or plan of the United States or a State, or*

(B) *to periodic benefits under any other law or plan of the United States, a State, a political subdivision (as that term is used in section 218(b)(2)), or an instrumentality of two or more States (as that term is used in section 218(k)), other than benefits payable under title 38, United States Code, benefits payable under a program of assistance which is based on need, benefits based on service all or substantially all of which was included under an agreement entered into by a State and the Secretary under section 218, and benefits under a law or plan of the United States based on service all or substantially all of which is employment as defined in section 210,*

the total of his benefits under section 223 for such month and of any benefits under section 202 for such month based on his wages and self-employment income shall be reduced (but not below zero) by the amount by which the sum of—

(3) such total of benefits under sections 223 and 202 for such month, and

(4) such periodic benefits payable (and actually paid) for such month to such individual under,

exceeds the higher of—

(5) 80 per centum of his "average current earnings", or

(6) the total of such individual's disability insurance benefits under section 223 for such month and of any monthly insurance benefits under section 202 for such month based on his wages and self-employment income, prior to reduction under this section.

In no case shall the reduction in the total of such benefits under sections 223 and 202 for a month (in a continuous period of months) reduce such total below the sum of—

(7) the total of the benefits under sections 223 and 202, after reduction under this section, with respect to all persons entitled to benefits on the basis of such individual's wages and self-employment income for such month which were determined for such individual and such persons for the first month for which reduction under this section was made (or which would have been so determined if all of them had been so entitled in such first month), and

(8) any increase in such benefits with respect to such individual and such persons, before reduction under this section, which is made effective for months after the first month for which reduction under this section is made.

For purposes of clause (5), an individual's average current earnings means the largest of 【(A) the average monthly wage (determined under section 215(b) as in effect prior to January 1979) used for purposes of computing his benefits under section 223, (B)】 (A) one-sixtieth

of the total of his wages and self-employment income [(computed without regard to the limitations specified in sections 209(a) and 211(b)(1))] for the five consecutive calendar years after 1950 for which such wages and self-employment income were highest, or [(C)] (B) one-twelfth of the total of his wages and self-employment income [(computed without regard to the limitations specified in sections 209(a) and 211(b)(1))] for the calendar year in which he had the highest such wages and income during the period consisting of the calendar year in which he became disabled (as defined in section 223(d)) and the five years preceding that year. In any case where an individual's wages and self-employment income reported to the Secretary for a calendar year reach the limitations specified in sections 209(a) and 211(b)(1), the Secretary under regulations shall estimate the total of such wages and self-employment income for purposes of clauses (B) and (C) of the preceding sentence on the basis of such information as may be available to him indicating the extent (if any) by which such wages and self-employment income exceed such limitations. For purposes of the preceding sentence, the total of an individual's wages and self-employment income for any year or other period shall be computed without regard to the limitations specified in sections 209(a) and 211(b)(1); and the total of an individual's wages for the period consisting of the calendar year in which he became disabled (as defined in section 223(d)) and the five years preceding that year shall also include the amount of any additional earnings which would have been credited to such individual under this title as wages for that period (computed without regard to such limitations) if none of the exclusions contained in paragraphs (5), (6), (7), and (8) (B) of section 210(a) had been in effect, to the extent that such individual substantiates his receipt of such amount (and the performance of the services involved) to the satisfaction of the Secretary.

SUSPENSION OF BENEFITS BASED ON DISABILITY

SEC. 225. [(a)] If the Secretary, on the basis of information obtained by or submitted to him, believes that an individual entitled to benefits under section 223, or that a child who has attained the age of eighteen and is entitled to benefits under section 202(d), or that a widow or surviving divorced wife who has not attained age 60 and is entitled to benefits under section 202(e), or that a widower who has not attained age 60 and is entitled to benefits under section 202(f), may have ceased to be under a disability, the Secretary may suspend the payment of benefits under such section 202(d), 202(e), 202(f), or 223, until it is determined (as provided in section 221) whether or not such individual's disability has ceased or until the Secretary believes that such disability has not ceased. In the case of any individual whose disability is subject to determination under an agreement with a State under section 221(b), the Secretary shall promptly notify the appropriate State of his action under [this subsection] *this section* and shall request a prompt determination of whether such individual's disability has ceased. For purposes of [this subsection] *this section*, the term "disability" has the meaning assigned to such term in section 223(d). Whenever the benefits of an individual entitled to a disability

insurance benefit are suspended for any month, the benefits of any individual entitled thereto under subsection (b), (c), or (d) of section 202, on the basis of the wages and self-employment income of such individual, shall be suspended for such month. The first sentence of [this subsection] *this section* shall not apply to any child entitled to benefits under section 202(d), if he has attained the age of 18 but has not attained the age of 22, for any month during which he is a full-time student (as defined and determined under section 202(d)).

[(b) Notwithstanding any other provision of this title, payment to an individual of benefits based on disability (as described in the first sentence of subsection (a)) shall not be terminated or suspended because the physical or mental impairment, on which the individual's entitlement to such benefits is based, has or may have ceased, if—

[(1) such individual is participating in an approved vocational rehabilitation program under a State plan approved under title I of the Rehabilitation Act of 1973, and

(2) the Commissioner of Social Security determines that the completion of such program, or its continuation for a specified period of time, will increase the likelihood that such individual may (following his participation in such program) be permanently removed from the disability benefit rolls.]

* * * * *

TITLE XVI—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

* * * * *

PART A—DETERMINATION OF BENEFITS

* * * * *

MEANING OF TERMS

Aged, Blind, or Disabled Individual

SEC. 1614. (a) (1) For purposes of this title, the term "aged, blind, or disabled individual" means an individual who—

(A) is 65 years of age or older, is blind (as determined under paragraph (2)), or is disabled (as determined under paragraph (3)), and

(B) is a resident of the United States, and is either (i) a citizen or (ii) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 203(a) (7) or section 212(d) (5) of the Immigration and Nationality Act).

(2) An individual shall be considered to be blind for purposes of this title if he has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diam-

eter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of the first sentence of this subsection as having a central visual acuity of 20/200 or less. An individual shall also be considered to be blind for purposes of this title if he is blind as defined under a State plan approved under title X or XVI as in effect for October 1972 and received aid under such plan (on the basis of blindness) for December 1973, so long as he is continuously blind as so defined.

(3) (A) An individual shall be considered to be disabled for purposes of this title if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months (or, in the case of a child under the age of 18, if he suffers from any medically determinable physical or mental impairment of comparable severity).

(B) For purposes of subparagraph (A), an individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

(C) For purposes of this paragraph, a physical or mental impairment is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

(D) The Secretary shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. *No individual who is an aged, blind, or disabled paragraph (shall be regarded as having demonstrated an ability to engage in substantial gainful activity on the basis of earnings that do not exceed (i) the amount which was sufficient, under the regulations of the Secretary then in effect, to cause an individual to be treated as having demonstrated such an ability in the month in which the Dis-individual solely by reason of disability (as determined under this ability Amendments of 1982 were enacted, or (ii) if one or more increases in exempt amounts under section 203(f)(8) have occurred pursuant to subparagraph (B) thereof during the period beginning with the month after the month specified in clause (i) and ending with the month in which the particular earnings involved are derived, the amount to which the amount specified in clause (i) would have increased under such section 203(f)(8) during such period if (in the month specified in clause (i)) it had been an exempt amount applicable to individuals other than those described in subparagraph (D) of such section 203(f)(8). In determining whether an individual is able to*

engage in substantial gainful activity by reason of his earnings, where his disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, there shall be excluded from such earnings an amount equal to the cost (to such individual) of any attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine medical services unless such drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Secretary in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions; except that the amounts to be excluded shall be subject to such reasonable limits as the Secretary may prescribe. Notwithstanding the provisions of subparagraph (B), an individual whose services or earnings meet such criteria, except for purposes of subparagraph (F) or paragraph (4), shall be found not to be disabled.

(E) Notwithstanding the provisions of subparagraphs (A) through (D), an individual shall also be considered to be disabled for purposes of this title if he is permanently and totally disabled as defined under a State plan approved under title XIV or XVI as in effect for October 1972 and received aid under such plan (on the basis of disability) for December 1973 (and for at least one month prior to July 1973), so long as he is continuously disabled as so defined.

(F) For purposes of this title, an individual whose trial work period has ended by application of paragraph (4)(D)(i) shall, subject to section 1611(e)(4), nonetheless be considered (except for purposes of section 1631(a)(5)) to be disabled through the end of the month preceding the termination month. For purposes of the preceding sentence, the termination month for any individual shall be the earlier of (i) the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (ii) the first month, after the period of 15 consecutive months following the end of such period of trial work, in which such individual engages in or is determined to be able to engage in substantial gainful activity.

(4)(A) For purposes of this title, any services rendered during a period of trial work (as defined in subparagraph (B)) by an individual who is an aged, blind, or disabled individual solely by reason of disability (as determined under paragraph (3) of this subsection) shall be deemed not to have been rendered by such individual in determining whether his disability has ceased in a month during such period. [As used in this paragraph, the term "services" means activity which is performed for remuneration or gain or is determined by the Secretary to be of a type normally performed for remuneration or gain.] *As used in this paragraph with respect to any individual who is an aged, blind, or disabled individual solely by reason of disability (as determined under paragraph (3)), the term "services" means activity which is determined by the Secretary to be of a type normally performed for remuneration or gain, and which is performed (by the particular individual involved) in any month for remuneration or gain at least equal to (i) the amount of remuneration or gain which was sufficient, under the regulations of the Secretary then in effect, to cause the activity to be treated as constituting "services" for purposes*

of this paragraph in the month in which the Disability Amendments of 1982 were enacted, or (ii) if one or more increases in exempt amounts under section 203(f)(8) have occurred pursuant to subparagraph (B) thereof during the period beginning with the month after the month specified in clause (i) of this sentence and ending with the month in which the particular activity involved is performed, the amount to which the amount specified in clause (i) of this sentence would have increased under such section 203(f)(8) during such period if (in the month specified in clause (i)) it had been an exempt amount applicable to individuals other than those described in subparagraph (D) of such section 203(f)(8).

REHABILITATION SERVICES FOR BLIND AND DISABLED INDIVIDUALS

SEC. 1615. (a) * * *

* * * * *

[(d) The Secretary is authorized to reimburse the State agency administering or supervising the administration of a State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act for the costs incurred under such plan in the provision of rehabilitation services to individuals who are referred for such services pursuant to subsection (a) if such services result in their performance of substantial gainful activity which lasts for a continuous period of nine months. The determination of the amount of costs to be reimbursed under this subsection shall be made by the Commissioner of Social Security in accordance with criteria determined by him in the same manner as under section 222(d)(1).]

(d) (1) *The Secretary is authorized to pay the State agency administering or supervising the administration of a State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 for the costs incurred under such plan in the provision of vocational rehabilitation services which meet the requirements of paragraph (2) to individuals who are referred for such services pursuant to subsection (a). The determination that services meet the requirements of paragraph (2), and the determination of the amount of the costs to be paid under this paragraph, shall be made by the Commissioner of Social Security in accordance with criteria determined by him in the same manner as under section 222(d)(1)(A).*

(2) *Vocational rehabilitation services provided to an individual described in subsection (a) meets the requirements of this paragraph—*

(A) *to the extent such services consist of evaluation services as determined by the Commissioner of Social Security,*

(B) *if such services result in—*

- (i) *such individual's performance of substantial gainful activity which lasts for a continuous period of nine months, or*
- (ii) *such individual's recovery from his disabling physical or mental impairment, or*

(C) *if such individual refuses without good cause to continue to accept vocational rehabilitation services or fails to cooperate in such a manner as to preclude such individual's successful rehabilitation.*

(3) *Payments under this subsection shall be made in advance (or, at the election of the State agency involved, by way of reimbursement), with necessary adjustments for overpayments and underpayments.*

(f) *Notwithstanding any other provision of this section, the Secretary, instead of referring individuals age 16 or over to a designated State agency for vocational rehabilitation services as otherwise required by subsection (a), may provide such services to those individuals (in such cases as he may determine) by agreement or contract with other public or private agencies, organizations, institutions, or individuals. To the extent appropriate and feasible—*

(1) *vocational rehabilitation services under the preceding sentence shall be provided in the same manner, and in accordance with the same requirements and criteria, as in the case of vocational rehabilitation services provided by agreement or contract under section 222(d)(1); and*

(2) *all of the preceding provisions of this section which relate to services for individuals age 16 or over who are referred to a State agency under subsection (a) shall apply with respect to services provided to individuals age 16 or over by agreement or contract under the preceding sentence, in the same way that they apply with respect to services provided pursuant to such a referral, as though the agency, organization, institution, or individual involved were the designated State agency and such individuals had been referred to it under subsection (a).*

PART B—PROCEDURAL AND GENERAL PROVISIONS

PAYMENTS AND PROCEDURES

Payment of Benefits

SEC. 1631. (a) (1) Benefits under this title shall be paid at such time or times and in such installments as will best effectuate the purposes of this title, as determined under regulations (and may in any case be paid less frequently than monthly where the amount of the monthly benefit would not exceed \$10).

(2) Payments of the benefit of any individual may be made to any such individual or to his eligible spouse (if any) or partly to each, or, if the Secretary deems it appropriate to any other person (including an appropriate public or private agency) who is interested in or concerned with the welfare of such individual (or spouse). Notwithstanding the provisions of the preceding sentence, in the case of any individual or eligible spouse referred to in section 1611(e)(3)(A), the Secretary shall provide for making payments of the benefit to any other person (including an appropriate public or private agency) who is interested in or concerned with the welfare of such individual (or spouse).

(3) The Secretary may by regulation establish ranges of incomes within which a single amount of benefits under this title shall apply.

(4) The Secretary—

(A) may make to any individual initially applying for benefits under this title who is presumptively eligible for such benefits

and who is faced with financial emergency a cash advance against such benefits in an amount not exceeding \$100; and

(B) may pay benefits under this title to an individual applying for such benefits on the basis of disability or blindness for a period not exceeding 3 months prior to the determination of such individual's disability or blindness, if such individual is presumptively disabled or blind and is determined to be otherwise eligible for such benefits, and any benefits so paid prior to such determination shall in no event be considered overpayments for purposes of subsection (b) solely because such individual is determined not to be disabled or blind.

(5) Payment of the benefit of any individual who is an aged, blind, or disabled individual solely by reason of blindness (as determined under section 1614(a)(2)) or disability (as determined under section 1614(a)(3)), and who ceases to be blind or to be under such disability, shall continue (so long as such individual is otherwise eligible) through the second month following the month in which such blindness or disability ceases.

(6) Notwithstanding any other provision of this title, payment of the benefit of any individual who is an aged, blind, or disabled individual solely by reason of disability (as determined under section 1614(a)(3)) shall not be terminated or suspended because the physical or mental impairment, on which the individual's eligibility for such benefit is based, has or may have ceased, if—

(A) such individual is participating in an approved vocational rehabilitation program under a State plan approved under title I of the Rehabilitation Act of 1973, and

(B) the Commissioner of Social Security determines that the completion of such program, or its continuation for a specified period of time, will increase the likelihood that such individual may (following his participation in such program) be permanently removed from the disability benefit rolls.

(7) (A) *In any case where—*

(i) *an individual who is an aged, blind, or disabled individual solely by reason of blindness (as determined under section 1614(a)(2)) or disability (as determined under section 1614(a)(3)) has been a recipient of benefits under this title for a period of not less than 36 consecutive months, and*

(ii) *the impairment on the basis of which such benefits are payable is found to have ceased or not to have existed (or to be no longer disabling), and as a consequence such individual is determined, on or after the date of the enactment of this paragraph (or October 1, 1982, if later) and before January 1, 1985, not to be eligible for such benefits,*

such individual shall be entitled (subject to subparagraph (B)) to have the payment of such benefits continued for an additional period of four months, beginning with the first month for which (under such determination) such benefits are no longer otherwise payable under this title or (if later) with the month in which he is initially notified in writing (by the applicable State agency or the Secretary) of such determination.

(B) No benefit shall be payable to any individual under subparagraph (A) for any month in the additional period referred to in such subparagraph if such individual is determined by the Secretary to have engaged in substantial gainful activity in that month.

Overpayments and Underpayments

(b)(1) Whenever the Secretary finds that more or less than the correct amount of benefits has been paid with respect to any individual, proper adjustment or recovery shall, subject to the succeeding provisions of this subsection, be made by appropriate adjustments in future payments to such individual or by recovery from or payment to such individual or his eligible spouse (or by recovery from the estate of either). The Secretary shall make such provision as he finds appropriate in the case of payment of more than the correct amount of benefits with respect to an individual with a view to avoiding penalizing such individual or his eligible spouse who was without fault in connection with the overpayment, if adjustment or recovery on account of such overpayment in such case would defeat the purposes of this title, or be against equity or good conscience, or (because of the small amount involved) impede efficient or effective administration of this title.

(2) In any case in which advance payments for a taxable year made by all employers to an individual under section 3507 of the Internal Revenue Code of 1954 (relating to advance payment of earned income credit) exceed the amount of such individual's earned income credit allowable under section 43 of such Code for such year, so that such individual is liable under section 43(g) of such Code for a tax equal to such excess, the Secretary shall provide for an appropriate adjustment of such individual's benefit amount under this title so as to provide payment to such individual of an amount equal to the amount of such benefits lost by such individual on account of such excess advance payments.

(3) *Notwithstanding any other provision of this title, in any case where—*

(A) an individual who is an aged, blind, or disabled individual solely by reason of blindness (as determined under section 1614(a)(2)) or disability (as determined under section 1614(a)(3)) is a recipient of benefits under this title, and

(B) the impairment on the basis of which such benefits are payable is found to have ceased or not to have existed (or to be no longer disabling), and as a consequence such individual is determined, on or after the date of the enactment of this subsection (or October 1, 1982, if later) and before January 1, 1985, not to be eligible for such benefits,

no such benefit which was paid to such individual for any month prior to the month in which he is initially notified in writing (by the applicable State agency or the Secretary of such determination shall be considered an overpayment for any of the purposes of this title.

[(3)](4) *For payments for which adjustments are made by reason of a retroactive payment of benefits under title II, see section 1127.*

Hearings and Review

(c) (1) The Secretary is directed to make findings of fact, and decisions as to the rights of any individual applying for payment under this title. Any such decision by the Secretary which involves a determination of disability and which is in whole or in part unfavorable to such individual shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the Secretary's determination and the reason or reasons upon which it is based. The Secretary shall provide reasonable notice and opportunity for a hearing to any individual who is or claims to be an eligible individual or eligible spouse and is in disagreement with any determination under this title with respect to eligibility of such individual for benefits, or the amount of such individual's benefits, if such individual requests a hearing on the matter in disagreement [within sixty days after notice of such determination is received] *within 180 days after notice of such determination is received where the matter in disagreement involves blindness (within the meaning of section 1614(a)(2)) or disability (within the meaning of section 1614(a)(3)) or within 60 days after such notice is received in any other case*, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing affirm, modify, or reverse his findings of fact and such decision. The Secretary is further authorized, on his own motion, to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this title. In the course of any hearing, investigation, or other proceeding, he may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Secretary even though inadmissible under the rules of evidence applicable to court procedure.

* * * * *

SOCIAL SECURITY DISABILITY AMENDMENTS OF 1980

* * * * *

* * * * *

TITLE III—PROVISIONS AFFECTING DISABILITY RECIPIENTS UNDER OASDI AND SSI PROGRAMS; ADMINISTRATIVE PROVISIONS

* * * * *

* * * * *

DISABILITY DETERMINATIONS; FEDERAL REVIEW OF STATE AGENCY DETERMINATIONS

* * * * *

* * * * *

SEC. 304. (a) * * *

* * * * *

(g) (1) The Secretary of Health and Human Services shall implement a program of reviewing, on his own motion, decisions rendered by administrative law judges as a result of hearings under section 221(d) of the Social Security Act, and shall report to the Congress by January 1, 1982, on his progress.

(2) *In implementing and carrying out the program referred to in paragraph (1), the Secretary shall review—*

(A) *at least 15 percent of all decisions, rendered by administrative law judges in the fiscal year 1982 as a result of hearings under section 221(e) of the Social Security Act, that individuals are or continue to be under disabilities (as defined in section 216(i) or 223(d) of such Act); and*

(B) *at least 25 percent of all such decisions so rendered in any fiscal year after the fiscal year 1982 and before the fiscal year 1988.*

* * * * *

TITLE V—OTHER PROVISIONS RELATING TO THE SOCIAL SECURITY ACT

* * * * *

AUTHORITY FOR DEMONSTRATION PROJECTS

SEC. 505. (a) (1) The Secretary of Health and Human Services shall develop and carry out experiments and demonstration projects designed to determine (A) the relative advantages and disadvantages of [(A)] (i) various alternative methods of treating the work activity of disabled beneficiaries under the old-age, survivors, and disability insurance program, including such methods as a reduction in benefits based on earnings, designed to encourage the return to work of disabled beneficiaries [(B)] (ii) altering other limitations and conditions applicable to such disabled beneficiaries (including, but not limited to, lengthening the trial work period, altering the 24-month waiting period for medicare benefits, altering the manner in which such program is administered, and earlier referral of beneficiaries for [rehabilitation, and greater use of employers and others to develop, perform, and otherwise stimulate new forms of rehabilitation),] rehabilitation); and (B) *how best to use organizations for profit and those not so organized in providing vocational rehabilitation services to disabled beneficiaries*; to the end that savings will accrue to the Trust Funds, or to otherwise promote the objectives or facilitate the administration of title II of the Social Security Act.

(2) The experiments and demonstration projects developed under paragraph (1) shall be of sufficient scope and shall be carried out on a wide enough scale to permit a thorough evaluation of the alternative methods under consideration while giving assurance that the results derived from the experiments and projects will obtain generally in the operation of the disability insurance program without committing such program to the adoption of any particular system either locally or nationally. *Not later than 18 months after the date of the enactment of the Disability Amendments of 1982, the Secretary shall develop and commence at least 10 experiments or projects referred to in clause (B) of paragraph (1), with one or more of such experiments or projects commencing in each of at least 5 States.*

(3) In the case of any experiment or demonstration project under paragraph (1), the Secretary may waive compliance with the benefit requirements of titles II and XVIII of the Social Security Act insofar as is necessary for a thorough evaluation of the alternative methods

under consideration. No such experiment or project shall be actually placed in operation unless at least ninety days prior thereto a written report, prepared for purposes of notification and information only and containing a full and complete description thereof, has been transmitted by the Secretary to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate. Periodic reports on the progress of such experiments and demonstration projects shall be submitted by the Secretary to such committees. When appropriate, such reports shall include detailed recommendations for changes in administration or law, or both, to carry out the objectives stated in paragraph (1).

(4) (A) The Secretary shall submit to the Congress no later than January 1, 1983, a report on the experiments and demonstration projects with respect to work incentives carried out under this subsection together with any related data and materials which he may consider appropriate.

(b) *The Secretary shall submit to the Congress no later than the end of the 18-month period referred to in the last sentence of paragraph (2) a report on the experiments and demonstration projects described in clause (B) of paragraph (1) which are commenced under this subsection together with any related data and materials which he may consider appropriate.*

* * * * *

SECTION 2208 OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1981

REDUCTION IN DISABILITY BENEFITS ON ACCOUNT OF OTHER RELATED PAYMENTS; EXTENSION OF OFFSET TO DISABLED WORKER BENEFICIARIES AGED 62 THROUGH 64 AND THEIR FAMILIES; CHANGE IN MONTH IN WHICH PAYMENTS ARE OFFSET

SEC. 2208. (a) * * *

(b) The amendments made by subsection (a) shall be effective with respect to individuals who first become entitled to benefits under section 223(a) of the Social Security Act for months beginning after the month in which this Act is enacted, but only in the case of an individual who became disabled within the meaning of section 223(d) of such Act after the sixth month preceding the month in which this Act is enacted; *except that the amendment made by subsection (a) (2) shall be effective in the case of an individual who attains age 62 after the month in which the Disability Amendments of 1982 are enacted even though he became disabled within the meaning of section 223(d) of the Social Security Act in or prior to such sixth month.*

SEPARATE VIEWS OF HON. HAROLD FORD, JAMES SHANNON, ROBERT MATSUI, DON BAILEY, CHARLES RANGEL, PETE STARK, FRANK GUARINI, WILLIAM BRODHEAD, MARTY RUSSO, BERYL ANTHONY, THOMAS DOWNEY AND KEN HOLLAND

H.R. 6181, the "Disability Amendments of 1982," contains a number of provisions which make needed improvements in the Disability Insurance and SSI disability programs. One of the provisions in the bill, however, will result in some disabled individuals being denied a fair chance to present all of the evidence of their disability when their benefits are being terminated. This is the provision in Section 5 of the bill which will close the record in termination cases at the reconsideration stage of the disability determination process. We believe this limitation will seriously undermine the appeal rights of thousands of individuals whose benefits are being terminated under the Administration's current criteria and procedures.

The disability determination process involves several levels:

State Agency Determinations:

- (a) Initial determination, and
- (b) Reconsideration.

Hearing before an Administrative Law Judge (ALJ).

Appeals Council Review.

Federal District Court.

Under present law, the record is closed to additional evidence after a decision is made at the ALJ hearing. Section 5 of H.R. 6181 would close the record after the reconsideration level in the case of benefit terminations.

The hearing before an Administrative Law Judge is the first autonomous, independent review of the decision by the State agency to terminate an individual's disability benefits. Such review is particularly important in light of the hundreds of thousands of disability redeterminations which are going to take place over the coming months. Overworked and underfinanced State agencies simply cannot be expected to be 100% correct in making disability determinations. All of the evidence in support of a disability claim cannot be expected to be gathered in every case in time for the State agency hearing. Not every individual will be represented by counsel at the State level or understand the importance of presenting documentary evidence at the reconsideration hearing. It is reasonable to expect that some mistakes and omissions are going to be made at the State level. By allowing the record to remain open to additional evidence through the ALJ hearing, tragic mistakes can be avoided.

The stated intent of H.R. 6181 is to respond to the crises facing the Disability Insurance program and the SSI disability program.

The first crisis is in the disability appeals system, with an expanding backlog of cases awaiting a hearing before Administrative Law Judges. The second crisis is that of the disabled people, many without other means of support, who are being denied disability benefits because of the new criteria and procedures which the Social Security Administration is requiring State agencies to use in determining eligibility.

The bill's approach to addressing the crisis in the *system* will compound and exacerbate the crisis faced by the *people* who are losing their disability benefits. Restricting the right to appeal the decision made by the State agency is not the way to improve the system at the State level.

Making the reconsideration level a more meaningful step in the disability determination process is a sound goal. To the extent that cases are resolved at this stage, the system will be improved. Closing the record at this stage, however, as Section 5 would do, is an unfair and inefficient means of improving the process at the State level. The whole purpose of the hearing by an Administrative Law Judge is to provide an independent check and balance to executive discretion under the law. If the hearing before the Administrative Law Judge is to have any meaning at all, the individual's appealing the State agency decision must be allowed to present all of their evidence.

We intend to offer an amendment on the House floor to retain present law and keep the record open through the ALJ level.

HAROLD FORD.

DON BAILEY.

FRANK GUARINI.

BERYL ANTHONY, Jr.

JIM SHANNON.

CHARLES B. RANGEL.

BILL BRODHEAD.

THOMAS DOWNEY.

ROBERT MATSUI.

PETE STARK.

MARTY RUSSO.

KEN HOLLAND.